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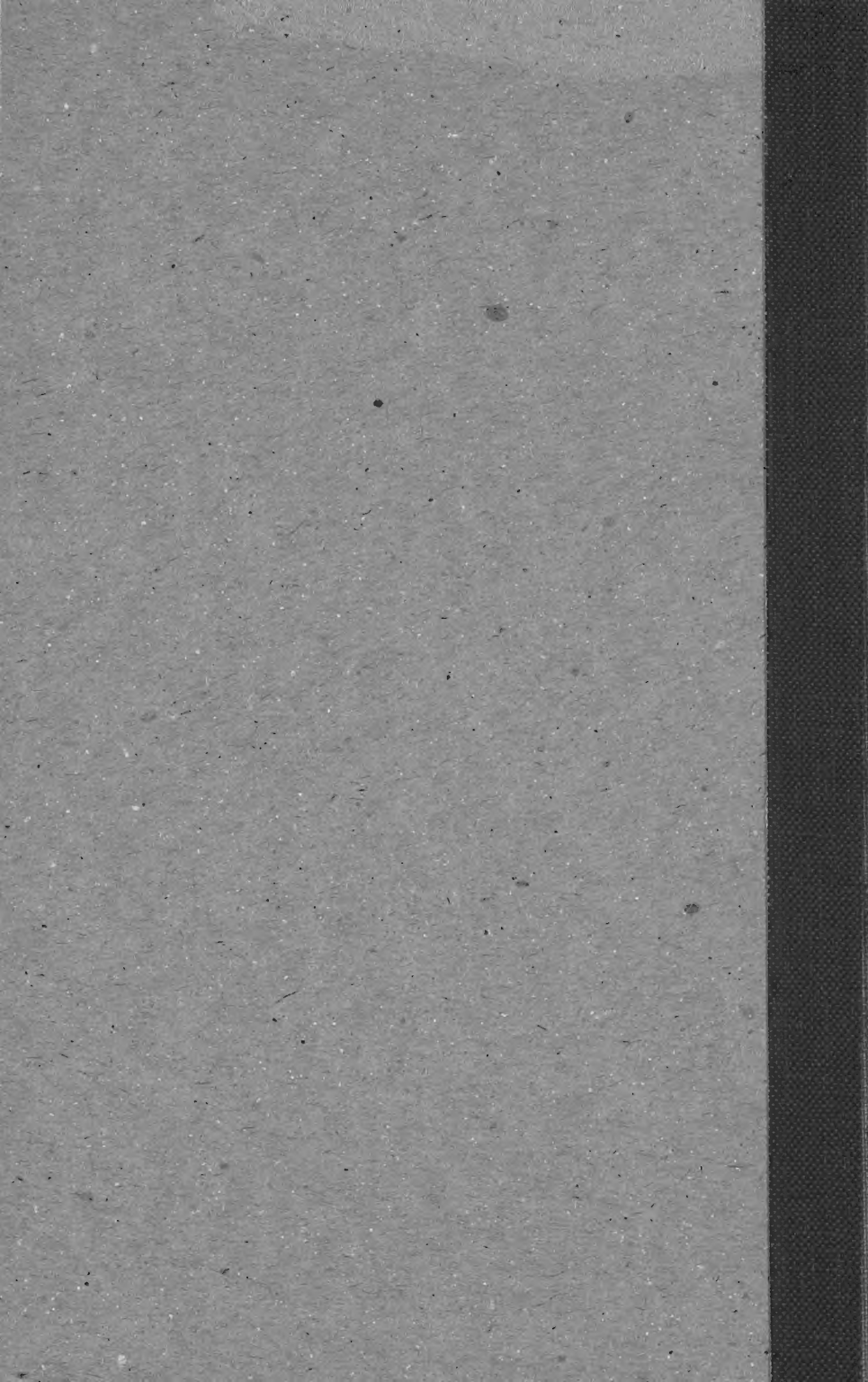
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Canada. Commission to Inquire into
Reports of Mr. Justice Galt of
Manitoba against the Honourable
Robert Rogers

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REPORT OF THE

McLeod-Tellier Commission

Appointed to review evidence taken before
Mr. Justice Galt in Winnipeg, while
investigating contracts for Man-
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Hon. Robert Rogers Exonerated

Findings of Justice Galt are reversed
being found contrary to evidence
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REPORT OF THE McLeod-Tellier Commission

The following five pages are taken verbatim from the official report of the House of Commons and explain the reasons for the appointment of the McLeod-Tellier Commission. The report of the Commission then follows.

HONOURABLE ROBERT ROGERS ROYAL COMMISSION APPOINTED

Right Hon. Sir ROBERT BORDEN (Prime Minister): Mr. Speaker on the 28th day of May, the hon. the Minister of Public Works (Mr. Rogers) addressed to me a letter which I desire to read to the House and which is as follows:

Office of the Minister of Public Works,
Ottawa, May 28, 1917.

My dear Sir Robert:

Some time in the summer of nineteen sixteen, the present Government of Manitoba appointed a Commissioner, Mr. A. C. Galt, to make investigation and to report to them with regard to the construction of the Manitoba Agricultural College. This work was undertaken and a very small proportion done while I was Minister of Public Works for that province. Mr. Galt has made two reports—one some time last January and the other two or three days ago. In these reports he has chosen to reflect on my conduct as such minister, and it is only as regards those portions of the reports in which he so reflects that I feel justified in drawing the matter to your attention.

While making his investigation on the subjects covered by his first report, Mr. Galt telegraphed me to Ottawa on September 12 last, informing me of certain evidence which he evidently regarded as requiring answer on my part. I at once went to Winnipeg and appeared before him and gave full explanation of the subject covered by his telegram and answered all questions put to me. It was manifest to me then from Mr. Galt's demeanour

and remarks that he purposed sparing no effort and rejecting no means, however unfair, of doing me all the injury in his power. I, therefore, from that point forward took little or no interest in the proceedings of his Commission, being absolutely certain not only that my own conduct in the premises had been straightforward and in the public interest, but that, though it would be a waste of time to make any attempt to influence the purpose of Mr. Commissioner Galt, there would be no difficulty later in exposing and establishing before any fair and competent tribunal both the true facts of the case and the malice of this commissioner. I did, however, subsequently inform Mr. Galt that I was prepared, though in Ottawa, to answer any summons in the same way as if it were served on me in Manitoba.

As regards the proceedings subsequent to the first report, and as regards the subjects covered by the second report, in respect to which Mr. Galt is pleased to reflect on my public conduct, you will be surprised to learn—I say this knowing that you are not acquainted with Mr. Galt—that I was never informed by the Commissioner, directly or indirectly, of any statements in evidence affecting me in the slightest degree, nor was I offered any opportunity whatever of making explanation or defence. It is quite true that no explanation or defence, however complete or however substantiated, would have affected in the least Mr Galt's determination, but this fact cannot be offered as an excuse on his part for abandoning and indeed prostituting the most elementary principle of British justice—that it is a fact however, does, I think, fully establish the predetermination and malice of the Commissioner.

As soon as I was informed of the contents of each report, I made full and public denial of every allegation contained in them, affecting myself. This denial I now affirm.

I believe I am entitled to a full and fair investigation by a tribunal of high standing of all matters contained in these reports, reflecting in any way on my public conduct. Though I have not yet been able to obtain a copy of the evidence, I cannot believe that any evidence could have been given substantiating the reports so far as they allege breach of duty on my part. I ask that such a tribunal be appointed in order that it may be known whether there was such evidence, and if so, to make full and complete inquiry and report as to whether, if any such evidence was given, the same was true.

Yours sincerely,

R. Rogers.

To that letter I gave the following reply on the 30th day of May:

Ottawa, 30th May, 1917.

Dear Mr. Rogers:

I beg to acknowledge your letter of the 28th instant. I have taken into consideration the action which you request with respect to the reflections upon your conduct as a member of the Provincial Executive of Manitoba, which are set forth in the reports of Commissioner Galt. I shall bring your request to the

attention of Council forthwith so that your representations and the course which should be taken with regard to the matter may be considered by all the members of the Government.

Yours faithfully,

The Honourable
Robert Rogers, M.P.,
Minister of Public Works,
Ottawa.

A COMMISSION APPOINTED

The subject was taken up and considered in Council, with the result that it was referred to the Minister of Justice, who yesterday presented a report to Council upon which an Order in Council has been passed and approved by His Excellency. I shall now read that Order in Council:

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 6th June, 1917.

The Committee of the Privy Council have had before them a Report dated 4th June, 1917, from the Minister of Justice, stating that the Honourable Mr. Justice Galt of Manitoba, who was appointed a Commissioner by the Lieutenant-Governor of Manitoba on 15th July, 1916, to investigate and report upon certain matters of concern to the local Government, has, as the Minister of Justice is informed, in pursuance of his said Commission made two reports, the first dated 26th January last, and the second dated 25th May, by which reports the Commissioner makes certain findings or observations reflecting upon the honour or integrity of the Honourable Robert Rogers, presently Minister of Public Works of Canada, in connection with the said matters above referred to and his actions in regard thereto, at a time when he was Minister of Public Works of the said Province of Manitoba, and that Mr. Rogers avers that all such findings and observations and the said reports in so far as they in anywise affect him prejudicially are unjustified in fact and not upheld or established by the evidence or facts in proof before the Commissioner.

Mr. Rogers also complains of lack of notice, and that as to some of the findings in question he was not afforded an opportunity to give or present evidence before the Commissioner, and moreover he challenges the impartiality and intent of the Commissioner upon the matters under consideration so far as they affect Mr. Rogers. In these circumstances Mr. Rogers asks for a full and fair investigation by a tribunal of high standing of all matters contained in the aforesaid reports reflecting in any way upon his public conduct.

The minister being of the opinion that the situation as thus presented invites further consideration recommends that the Honourable Sir Ezekiel McLeod, Chief Justice of the Supreme

Court of New Brunswick, and the Honourable Louis Tellier, a retired Judge of the Superior Court of the Province of Quebec, be appointed Commissioners under Part 1 of the Inquiries Act, Revised Statutes of Canada, 1916, Chapter 104, for the purpose of reviewing and considering the evidence taken before the said Commissioner Galt in the execution of his commission aforesaid, and his said reports and findings thereon, and of reporting for the information of Your Excellency in Council whether, there was evidence before the said Commissioner Galt to sustain or support the findings of the said Commissioner as set forth in his said reports in so far as they reflect upon or prejudicially affect the honour or integrity of Mr. Rogers or the honesty of his dealings or transactions, the said hereby appointed Commissioners to have power should they find that there is any such evidence, to make such further inquiry and take such further and additional evidence as may to them appear necessary for the purpose of enabling them to determine and report upon the truth or falsity of the evidence so by them found, any further evidence so taken and the determination of said hereby named Commissioners thereon to be also reported; and that the said Honourable Sir Ezekiel McLeod and Honourable Louis Tellier as such Commissioners shall moreover have all the powers in the execution of their said Commission which are mentioned, enumerated or provided for by the said Part 1 of the Inquiries Act and the Act amending the same of 2 George V. Chapter 28, intituled "An Act to amend the Inquiries Act."

The Committee concur in the foregoing and submit the same for approval.

Rodolphe Boudreau,
Clerk of the Privy Council.

There is nothing further to add except that the Minister of Public Works (Mr. Rogers) has requested of me that, pending the investigation, he shall be relieved of all administrative duties in connection with the Department of Public Works, and that the administration of the department shall be taken over by myself or by some other minister, and I have acceded to that request.

SIR WILFRID LAURIER OBJECTS

Right hon. Sir WILFRID LAURIER (Quebec East): By your leave, Mr. Speaker I think the correspondence and the Order in Council which have just been submitted to the House require some comments on my part. I would say that the letter addressed by the hon. the Minister of Public Works (Mr. Rogers) to the Prime Minister is absolutely derogatory to the honour of the bench of this country.

Some hon. MEMBERS: Hear, hear.

Sir WILFRID LAURIER: The letter refers to Mr. Justice Galt, not as Mr. Justice Galt but as "Mr Galt." Mr. Justice Galt acted, not

in his capacity as a judge, but he was selected—as the hon. gentlemen who have just been named in the Order in Council, Sir Ezekiel McLeod and Hon Louis Tellier, have been selected—on account of his judicial capacity. It is to be remembered, Sir, and it cannot be forgotten on this occasion, that the complaint of the Minister of Public Works of unfairness by Mr. Justice Galt to him arose largely, if not altogether, and I would say altogether, from the insult which was poured upon the head of Mr. Justice Galt by the Minister of Public Works. The Minister of Public Works was called upon to give evidence before the commissioner. He had the right to be summoned, and he appeared. And, Sir, in the public press and in his evidence to Mr. Justice Galt's face he called him a grafter.

Mr. BEST: Hear, hear.

Sir WILFRID LAURIER: For what reason was he called a grafter? Because he accepted duties similar to those which have just been delegated to Sir Ezekiel McLeod and Hon. Louis Tellier, justices of the High Court. If Mr. Justice Galt was a grafter—which I resent, I do not know Mr. Justice Galt, I never met him in my life; he is a judge of the bench, that is all I know—but if he can be called a grafter for having accepted the duties which he discharged, Sir Ezekiel McLeod and Hon. Louis Tellier can also be called grafters equally; there is no difference. Now, Sir, the hon. Minister of Public Works asks that gentlemen of high standing shall be appointed to make a further inquiry. The tribunal which is being constituted by the Government to investigate this matter is of no higher standing or of no lower standing than the commission which was presided over by Mr. Justice Galt; it is exactly the same. I do not know Mr. Justice Galt, but I understand that he is a judge of integrity, in good standing in his profession, and that his honour has never been impugned. Before he was appointed to the Bench he was not active in either political party. Under these circumstances, if any new tribunal is to try the Minister of Public Works, it should be a committee of this House. There are two methods of making public investigations, either by a committee of this House, the High Court of Parliament, or by members of the Bench, who are selected because of their legal standing and because they are supposed, by the very character of their office, to be above reproach. If the report is to be condemned because the commission was presided over by a judge of the Supreme Court, the new inquiry should not be carried out by a commission of the same kind.

THE PRIME MINISTER'S REPLY

Sir ROBERT BORDEN: I am not disposed to discuss the character or qualifications of Mr. Justice Galt on this or any other occasion, un-

less a necessity which I cannot now foresee should arise. As I understand it the judges who are to perform this duty are not to accept fee or honorarium for it. My right hon. friend challenges the action we have taken and challenges the reflections which have been made upon Mr. Justice Galt in the letter written to me from the Minister of Public Works. I should like to remind him that on a certain occasion one of his colleagues who sits beside him used infinitely stronger language, if my memory is correct, with regard to Mr. Justice Landry of the Supreme Court of New Brunswick, and he did so without any reproof from my right hon. friend. I am perfectly willing to contrast the action which we have taken in this matter with that which my right hon. friend took on that occasion. Findings had been made by a commission of which Mr. Justice Landry was a member. Those findings reflected seriously upon a member of my right hon friend's Government. The matter was brought to the attention of Parliament, and it was urged by a motion in this House that such a finding should be disregarded. My right hon. friend ignored the whole matter and voted down the motion, the precise words of which I have not before me; no consideration to the finding was given by him, and the then Minister of Public Works retained his position in the Government and continued to administer the affairs of his department. It seemed to me, when the matter was brought to my attention by the present Minister of Public Works, that such a course as was on that occasion pursued by my right hon. friend could not be followed or sanctioned with advantage to the public interest. I thought it my duty, therefore, to comply with the request made by the Minister of Public Works and to entrust the examination of this evidence and any further hearing that might be desired, to two members of the Bench, one of whom is on the Bench at present and the other of whom has retired. Both are absolutely above reproach. I may add that the Minister of Public Works informs me that he is not acquainted with either of these two judges, and that, so far as he knows, he never met either one or the other of them.

THE McLEOD-TELLIER REPORT

The newly appointed Commission lost no time in getting to work and reviewing the voluminous evidence taken before Justice Galt. The sittings of the Commission were held in the City of Montreal and on the 28th of July they made report. After carefully reviewing all the evidence the Commissioners came to the conclusion that the findings of Justice Galt were not based upon evidence and the aspersions cast upon Mr. Rogers were each and all without any basis in fact. Mr. Rogers was completely exonerated.

REPORT OF THE COMMISSION

The report of the McLeod-Tellier Commission was as follows:

To His Excellency The Governor General in Council:

Your Commissioners, the Honourable Sir Ezekiel McLeod, of the City of St. John, in the Province of New Brunswick, Chief Justice of New Brunswick, and the Honourable Louis Tellier, of the City of St. Hyacinthe, in the Province of Quebec, a retired Judge of the Superior Court of Quebec, appointed by a Commission issued under the great Seal of Canada, dated the 6th day of June, A.D. 1917, under the Inquiries Act of Canada, being Revised Statutes 1906, Chapter 104 and Amending Acts,—by virtue of an Order-in-Council, passed the 6th day of June, A.D. 1917,—whereby your Commissioners were empowered and directed to conduct an inquiry and investigation for the purpose of reviewing and considering the evidence taken by Mr. Justice Galt, a Commissioner appointed by the Lieutenant Governor of Manitoba on the 15th day of July, 1916, to investigate and report upon certain matters of concern to the Local Government of the said Province, in the execution of such Commission, and to review and consider his reports and findings on such evidence; and to report whether such evidence sustains or supports the findings of the said Commissioner as set forth in such reports, insofar as they reflect upon or prejudicially affect the honour or integrity of the Hon. Robert Rogers, or the honesty of his dealings or transactions: the said Hon. Robert Rogers, as appears by said Order of the Governor General in Council, transmitted to your Commissioners with said Commission, having averred that all such findings and observations and the said reports, in so far as they in any wise affect him prejudicially, are unjustified in fact and not upheld or established by the evidence or facts in proof before the said Mr. Justice Galt, as such Commissioner, and having also complained of lack of notice, and that as regards some of the findings in question he was not afforded an opportunity to give or present evidence, beg to report as follows:

(1) Your Commissioners met at the City of Montreal in the Province of Quebec on the eleventh day of June, 1917, and appointed L. J. Loranger, K.C., Secretary to the Commission.

Subsequently on the 29th day of June, feeling that assistance of counsel was necessary, your Commissioners retained Mr. M. G. Teed, K.C., of the City of St. John, to aid and assist them in the Inquiry.

Your Commissioners were in continuous session during every day from the said 11th day of June to the 22nd day of June inclusive, and from the 28th day of June to the 26th day of July inclusive.

(2) From the evidence and documents submitted to your Commissioners, it appears that the Hon. Mr. Justice Galt, one of the Justices of the Court of King's Bench, of the Province of Manitoba, was, by the Lieutenant Governor of that Province, by a Commission under the great Seal of that Province, dated the 14th day of July, A.D. 1916, appointed a Commissioner to investigate and inquire into all matters pertaining to the Manitoba Agricultural College, and the contracts entered into therefor, and the expenditure of public moneys in respect thereof, and certain other matters connected therewith, and the sub-contracts made thereunder, the persons interested in such sub-contracts, and the amounts paid to the said sub-contractors.

The said Inquiry was conducted before the said Mr. Justice Galt at great length.

Mr. PHILLIPPS, K.C., appeared as Counsel for the Manitoba Government.

Mr. HOSKIN, K.C., appeared for the Carter-Halls-Aldinger Co., Ltd.

THE TWO GALT REPORTS

Mr. Justice Galt has made two interim reports thereon: the first dated the 26th day of January, A.D. 1917; the second dated the 25th day of May, A.D. 1917, in each of which Mr. Justice Galt makes findings and observations reflecting upon and prejudicially affecting the honour and integrity of the said Hon. Robert Rogers, and the honesty of his dealings and transactions.

(3) Your Commissioners have been furnished with copies of the said two reports, certified by the Deputy Provincial Secretary of Manitoba, and also with copies of the evidence taken before Mr. Justice Galt, consisting of nearly 6,000 typewritten pages and a very large number of exhibits, together with the argument of counsel before him.

Having regard to the fact as appears by the Order-in-Council that Hon. Robert Rogers complained of lack of notice, and that as to some of the findings in question he was not afforded an opportunity to give or present evidence before Mr. Justice Galt, your Commissioners before deciding as to whether there was or was not evidence to sustain or support such findings, were of opinion, and decided, that the Hon. Mr. Rogers should be given an opportunity to be heard. Thereupon your Commissioners on the 30th of June, 1917, sent to Mr. Justice Galt a telegram to the effect that they proposed to have Mr. Rogers called and examined, and asking to be advised what date in the then near future—say within ten days—he, Mr. Justice Galt, could be repre-

sented. A similar telegram was sent to the Honorable the Attorney General of Manitoba, at the same time. An answer was received on behalf of Mr. Justice Galt to the effect that he did not desire to be heard or represented. No definite reply having been received from the Government of Manitoba, your Commissioners appointed Tuesday, the 10th day of July, 1917, at eleven o'clock in the forenoon, at the Court House, Montreal, for the hearing; and on the 6th day of July sent notice thereof by telegram to the Hon. Mr. Norris, Premier of Manitoba, and to the Hon. Mr. Rogers. A reply was received from the Hon. Mr. Norris to the effect that the Province did not wish to be represented, and from Hon. Mr. Rogers that he would attend.

At the time and place appointed, namely, on the 10th day of July, 1917, at the Court House, Montreal, your Commissioners held an open and public hearing. Hon. Mr. Rogers was present in person, and was also represented by Counsel, Mr. Lacoste, K.C., and Mr. Montgomery, K.C. Hon. Mr. Rogers was sworn and gave evidence.

Herewith submitted are the extended shorthand notes of the proceedings of such hearing.

THE ORIGINAL INVESTIGATION

(4) As appears by the evidence the matters that led up to such investigation before Mr. Justice Galt may be shortly stated as follows:

The Hon. Mr. Rogers was a member of the Government of Manitoba, and Minister of Public Works of that Province, in, and for some years prior to 1910, and up to the 9th of October, 1911, when he resigned and became Minister of Public Works of Canada.

The Government of Manitoba in 1910 decided to change the location of its Agricultural College and to build new and larger buildings therefor.

In September, 1910, through the Hon. Mr. Rogers, the Government of Manitoba arranged for the purchase of certain lands for the new College so to be built, consisting of nearly 600 acres situated on the Red River near the City of Winnipeg.

On the 29th of December, 1910, the Provincial Architect, Sam. Hooper, submitted to the Hon. Mr. Rogers an estimate of the approximate cost of the buildings as then contemplated as follows: (See 1st Rep. pp. 4 and 5.)

1 Main building, 128ft. x 64ft.	\$135,000.00
1 Domestic Science building, 120ft. x 60ft.	50,000.00

1 Dormitory building (boys)	130,000.00
1 Dormitory building (girls)	100,000.00
1 Dining room, hall and kitchen	110,000.00
1 Dairy building, two stories, 64ft. x 95ft	50,000.00
1 Chemistry and physics building	55,000.00
1 Botanical and horticultural building and green house.....	80,000.00
1 Machinery hall	70,000.00
1 Power house and plant	60,000.00
	<hr/>
	\$840,000.00

OUTBUILDINGS

1 Brick stock judging and veterinary building	\$ 25,000.00
1 Brick horse barn, 100ft. x 40ft.	25,000.00
1 Frame cattle barn, 80ft. x 36ft.	15,000.00
1 Frame dairy barn	5,000.00
1 Frame steer feeding barn	3,000.00
1 Frame bull barn	3,000.00
1 Frame sheep barn, 100ft. x 30ft.	6,000.00
1 Frame hog barn, 100ft. x 40ft.	8,000.00
1 Frame poultry plant	6,000.00
1 Frame granary building	6,000.00
1 Machine shed	5,000.00
3 Farm buildings	7,000.00
1 Farmer's residence	3,500.00
	<hr/>
	\$117,500.00

The above mentioned prices do not include tunnels for heating pipes, etc., to the various buildings.

With reference to the foregoing propositions and estimates, Mr. Justice Galt in his first report at page 5 states as follows:

"From the above information, furnished by the Provincial Architect to the Hon. Robert Rogers, at his request, it would appear that in December, 1910, it was considered by the architect that the requirements of the proposed new college buildings would cost:

"(1) For main buildings	\$840,000.00
"and	
"(2) For outbuildings	117,000.00
"Making a total of	<hr/> \$957,000.00

"As a matter of fact the buildings, as completed, have cost "the Province of Manitoba the sum of \$3,875,500.00."

CHANGED AND ENLARGED

With reference to the above statement your Commissioners would point out that the buildings as constructed were not at all of the class, size or character contemplated in that estimate. The whole scheme was changed and enlarged. More buildings were erected, and of a different and more expensive character.

See Evidence of S. C. Oxton, page 44:

"Q. About this general estimate which has been put in as "Exhibit No. 3, the scheme apparently in view at that time does "not appear to have been carried out as detailed in those estimates, does it?

"A. No, sir, it does not.

"Q. The buildings differ?

"A. Yes.

"Q. And the sizes differ?

"A. Exactly."

See also evidence of Mr. Howden at page 5004:

"Q. Now, I want to deal with this matter here. You had "bought land in 1910, in September, and you got an estimate "of \$957,000 in December. Now, when was it decided to embark "on the larger programme still? Here the Minister of Public "Works apparently had got the estimate, because in round "figures it amounts to \$950,000, for, not the old site, or an addition to it, but the new site. That was increased to \$2,875,000 "ultimately,—when it was decided to increase the plant, at it "were, to that size, and what was the occasion for it?

"A. Well, from time to time, buildings,—changes would be "made in the size of the buildings, and the number of the buildings, and then the Government made a windfall from Ottawa.

"Q. What was that?

"A. They got some back indemnity—some two millions of "dollars and Sir Rodmond was very anxious to have the Agricultural College the best it was possible to have it. That "seemed to be his hobby. Whether he was wise in expending "the amount of money that was expended there, that is another "question."

Having regard to the foregoing, it would not be right to compare the original estimate of \$957,000 with the actual ultimate expenditure; nor could overexpenditure be established by any such comparison.

THE FIRST REPORT

The first report of Mr. Justice Galt, dated the 26th of January, 1917, deals principally with the matters arising out of or connected with five contracts, namely:

(1) Carter-Halls Aldinger Company, Limited, for the Administration Building, \$229,000.

(2) Carter-Halls-Aldinger Company's contract for the Power House, \$68,929.00.

(3) Hammond and Rodway's contract for plumbing for certain buildings.

(4) J. W. Wright for plumbing and heating dormitories.

(5) Progress Construction Company's Contract.

The last three were let after the Hon. Mr Rogers left the Government, and as no connection between him and these Contractors is alleged in the reports, it is unnecessary to discuss them.

For brevity we shall hereafter refer to the Carter-Halls-Aldinger Company, Limited, as "The Carter Company."

In February, 1911, tenders were asked by the Department of Public Works of Manitoba, for the erection of the Administrative Building, which, as appears from the evidence of Mr. Oxtan, is what is called the main building in the architect's first estimate of cost.

Nine tenders were received ranging from \$229,000 to \$286,000. Of these, the four following were the lowest: (See Ex. No. 23).

The Carter Company, Ltd.	\$229,000
James McDiarmid Co., Ltd.	239,500
J. H. Tremblay & Co.	259,000
S. Brown	260,478¾

The Carter Co.'s tender, being the lowest, was accepted on the 3rd of March, and a contract afterwards entered into bearing that date. It will be noted that in the architect's estimate of cost in the original scheme, this building was estimated at \$135,000.

In July, 1911, tenders were called for the Power House, and four tenders were received as follows:

(See Exhibits Nos. 87, 88, 89 and 105).

The Carter Company	\$60,229
Cote & Benoit	71,350
Kelly-Simpson Construction Co.	72,975
Thomas Kelly & Sons	74,119

The practice in the Department in regard to the letting of contracts, is stated by the Commissioner at page 10 of the first report as follows:

"The method in vogue at the Department of Public Works, "in regard to the making of contracts may be briefly described "as follows:

"(See evidence given by C. H. Dancer, formerly Deputy Minister of Public Works and Chief Engineer).

"After the Government had decided upon any particular "work the first operation was to advertize for tenders (p. 591).

"When a contract was accepted the contractor was notified.

"A contract would then be drawn up by either the Deputy Minister or the architect (pp. 607-612). The contract having been

"executed by the contractor, a recommendation to Council "would be prepared by the Deputy Minister of Public Works "upon such information as he had, or was supplied to him by the "Architect (p. 600-601). The recommendation would then be "initialled by the Minister of Public Works and read before "Council, and, if satisfactory, would be passed by Council and "order-in-council duly signed. The Minister of Public Works "would then execute a contract on behalf of the Government." "The architect's department is part of the Department of "Public Works (p. 628), and the architect would receive a copy "of any contract entered into. The contractor would then be "notified and the work would proceed."

POWER HOUSE TENDERS

Tenders for the Power House were received up to 18th of July, but owing to the absence of the Minister, the Hon. Mr. Rogers, they were not opened until the 26th of July.

The tender of the Carter Co., being the lowest, was accepted by letter from the Deputy Minister, dated the 26th day of July, 1911, in which he also asked for details. (See Exhibit No. 91).

The Carter Co. acknowledged the receipt of this letter on the 27th of July, and sent details as requested. A printed form of contract was filled out and soon after sent to the Carter Co., who executed it and returned it to the Deputy Minister, (Exhibit No. 93). The exact date when it was sent or signed does not appear. It is dated 26th July. It was not, however, executed by the Government.

On the 11th of August, Mr. McTavish, an official in the Architect's office, sent to the Carter Co. a tender form (Exhibit No. 95) requesting to be furnished with a detailed statement separating some of the items which had been bulked together.

On the 15th of August Mr. Aldinger of the Carter Co. wrote to the Deputy Minister (Exhibit No. 96) enclosing the detailed statement requested by the letter of the 11th, and made up at the original figure of \$60,229. The Deputy Minister on the 16th of August sent this last mentioned detailed statement or tender to Mr. Hooper, the Architect, by letter of that date. (Exhibit No. 97).

Mr. Hooper, the Architect, is shown to have been ill and confined to his bed on the 13th of August and onwards until about the end of the month. It does not appear that he ever saw or knew of the above letters of the 11th, 15th, and 16th of August. In fact, it is common ground that he could not have seen those of the 15th and 16th of August.

Your Commissioners mention this here because Mr. Justice Galt in his first report (p. 18) refers to the letter signed by McTavish as having been written by the Provincial Architect (Hooper), and (pp. 14 and 18)

to the detailed statement as having been sent by Mr. Carter. The first letter, as your Commissioners have shown, was written by McTavish, and the letter of the 15th in reply, enclosing the detailed statement, was written by Aldinger and not by Mr. Carter, (Ex. No. 95).

Subsequently to the receipt of the original tender, and before the contract was executed by the Government, and before any Order-in-Council was passed authorizing its execution, the Hon. Mr. Rogers acting, as he says, on the recommendation of Mr. Hooper, the Provincial Architect, that the building could not be constructed for \$60,229, the amount of the tender, telephoned to Carter asking if "his tender was not low," to which Carter said, "Yes," and Mr. Rogers said: "Well, I think the Government will help you out."

AMENDED TENDER SENT IN

An amended tender was sent in by the Carter Co. increasing the amount by \$8,700, making the tender \$68,929. (See Ex. No. 102). The exact date on which this amended tender was forwarded or received does not appear.

On the 24th of August, 1911, the Hon. Mr. Rogers reported to the Lieutenant Governor in Council, the tenders received for the Power House, therein stating that the Carter Co.'s tender was \$68,929. (See Ex. No. 105). It is therefore conclusive that this amended tender must have been received prior to the 24th of August.

On the 1st of September, 1911, an Order-in-Council was passed authorizing the execution of a contract with the Carter Co., for the power house at that amount, (See Ex. 105).

Prior to that time, and on the 28th of August, 1911, (Ex. No. 98), a form of contract for \$68,929 had been forwarded by the Department to the Carter Co. and executed by it; but the first tender, and the first draft contract for the \$60,229 remained on the files of the Department, that draft contract being marked "Cancelled." The contract for the larger amount was actually executed by the Government on the 7th of September, 1911, but it was dated back to the 26th of July, 1911, this being the date of the original acceptance.

By reference to other contracts it appears to have been the usual practice in the Department to date the contracts back to the date of the acceptance of the tender.

A general election for the Dominion of Canada was held on the 21st of September, 1911, and Mr. Daniel E. Sprague, a member of the Conservative Committee, on the 18th of September called on the Carter Co. for a subscription for election or campaign purposes. Carter gave him a cheque for \$5,000, and on the 20th of the same month Mr.

Sprague called on Mr. Carter for a further subscription and received an additional amount of \$2,500. These amounts were each paid by cheque of the Carter Co.

Mr. W. H. Carter, the President of the Carter Co., was called as a witness, and during his examination stated that the Power House tender had been increased by \$8,700, and that he had contributed \$7,500 towards election funds.

ROGERS-GALT TELEGRAMS

Mr. Justice Galt thereupon caused the following telegram to be sent to Mr. Rogers:

(See First Report, p. 18).

"Re Agricultural Commission. Carter testified today that "after acceptance of power house tender you suggested to him "to increase the amount of tender, and he did increase it by "\$8,700; and that a few days later, September, 1911, D. E. Sprague, "Conservative Committee man, asked Carter for and collected "\$7,500 for Dominion election campaign fund. It also appeared "that the previous tender and acceptance were not disclosed to "council when you recommended acceptance of substituted tender. The commission is sitting daily."

The Hon. Mr. Rogers replied to this telegram as follows:

"Referring to your message, you can understand difficult "for me to have in mind all details; it is very manifest, however, "that it would not have been in the public interest to have "awarded Carter contract on original tender for power house, "for the reason that the work could not have been done under "specification at the tendered price. There was then also the "additional reason that Carter had tendered and received contract for the Administration Building, and at the time when "tenders were finally considered for power house it was plain "that Carter would make a very heavy loss on Administration "Building. In view of this it then became a question with the "Department whether Carter should then be refused contract "at all. The Department was no doubt influenced in allowing "Carter to put in new tender by reason of the fact that it was "then so apparent that his loss on Administration Building "would be very heavy. I am sure no one will argue that it would "have been in the public interest to have attempted to repeat a "similar condition in the construction of the power house, in "the hope of having same erected at less than cost. Presume "file in Department is intact, and will show both tenders. As "to contribution by Carter to Dominion fund during reciprocity "contest, I am certain that he will acknowledge under oath that "I never mentioned or suggested in any way contribution to "party fund, and I hope you will see that this question is asked "him."

Subsequent to this, and on or about the 21st of September, Mr. Rogers attended and gave evidence before the Commissioner.

Mr. Justice Galt on the evidence given, made the certain findings, a summary of which as set out on pages 41, 42 and 43 of his First Report, is as follows:—

RE CARTER'S INCREASED TENDER

"(1) Referring to the telegram received by me from the "Hon. Robert Rogers on September 13th, 1916, in reply to my "telegram to him of September 12th, notifying him of the evidence given by Messrs. Carter and Sprague on that date.

"I am unable to accept Mr. Rogers' statement that it would "not have been in the public interest to have awarded Carter "the contract on the original tender for the power house for "the reason that the work could not have been done under the "specifications at the tendered price.

"The evidence is that Carter voluntarily commenced work "on his original tender, and had made no complaint whatever "as to his tender being too low. The evidence also shows that "the Carter Company made a very substantial profit over and "above the amount of the original tender.

"(2) I am unable to accept Mr. Rogers' statement that "there was then also the additional reason that Carter had "tendered and received contract for the Administration Building, and at the time that tenders were finally considered for "the power house, it was plain that Carter would make a very "heavy loss on the Administration Building."

"The evidence given by Mr. Carter himself shows:

"(a) That he never expected any profit on the Administration Building, but tendered purposely at what he considered "net cost.

"(b) At the date of the increase allowed by Mr. Rogers to "Mr. Carter on the power house contract, only a small portion "of the Administration Building had been erected, and it was "quite impossible for either Mr. Carter or anybody else to say "whether he would sustain any loss on that contract or not.

"As a matter of fact, the Carter Company had already obtained a change in the plans of the Administration Building "which was worth some \$6,000 to the Carter Company over and "above their estimate of cost.

"(3) With regard to Mr. Rogers' oral evidence, I cannot "accept his first statement (Evid. p. 773) that his telephone communication with Mr. Carter took place within a week or ten "days after Carter's original tender on the power house at \$60,229 "had been accepted by the Government, and that this conversation took place upon the advice of Samuel Hooper, Provincial "Architect, then present with Mr. Rogers in the latter's office, "during the conversation (evid. pp. 776, 777 and 842), because it "was shown by the Government telegraphic record and admitted "by Mr. Rogers that he was absent from Winnipeg from July "28th, (on which date he was in Kenora) until the night of "August 12th.

"In the usual course of events the original contract would "take at least a day or two to prepare, and then it would be sent "to the Carter Company for execution.

"The evidence shows that the Carter Company did execute "the original contract, and then return it to the Department, "and they commenced work on their original contract on August "8th and on August 16th, neither Carter nor Hooper, nor Dancer "the Deputy Minister had any knowledge of an increase to be "made to Carter's tender.

"(4) I cannot accept Mr. Rogers' second statement that his "telephone communication with Carter must have occurred after "August 16th, upon the advice of Mr. Hooper, because the evi- "dence establishes that Mr. Rogers did not reach Winnipeg until "the night of August 12th, and that Mr. Hooper was taken "seriously ill on the morning of August 13th and never left his "bed until September when he went to England, and in the "meantime he was far too seriously ill to see anybody on busi- "ness; but the increased tender was allowed by Mr. Rogers on "or before August 24th when his recommendation to Council "was drawn up.

"(5) I cannot accept Mr. Rogers' third statement (see evi- "dence pp. 843-844) that the telephone communication may have "occurred on July 27th, the day after the original tender was "accepted; because, as I have already shown, Carter's tender "was accepted by the Government on July 26th, and subsequently "a contract was prepared and forwarded to the Carter Co. for "execution. It was then duly executed and returned to the Gov- "ernment. It is absurd to suppose that after accepting Carter's "tender on July 26th, Mr. Rogers would confer with the Provin- "cial Architect and grant an increased tender on July 27th, or "28th, while, in fact, Mr. Rogers' department was preparing a "contract based on the original tender, and having it executed by "the Carter Co.; but, above all, it is absurd to suppose that any "such conversation took place on July 27th or 28th between Mr. "Rogers and Mr. Carter, when it clearly appears by the evi- "dence that Carter was wholly ignorant of any increase coming "him as late as August 16th.

"(6) I can give no credence whatever to Mr. Rogers' fourth "final statement that 'if by any chance I used words that Mr. "Hooper was present at the time the telephone rang, that might "be incorrect, because I am not clear on that. I could not be "expected to be clear on it; if I used those words I would want "to say I would want to correct it. I am not sure that I did.'

"In the previous portion of Mr. Rogers' evidence he had said "again and again that Mr. Hooper was present with him in his "office when he telephoned to Mr. Carter, and that he acted "wholly upon Mr. Hooper's advice in granting the increase. "The position taken by Mr. Rogers after it had been demon- "strated to the Commission and to him that Mr. Hooper could "not have been in his office giving him the advice in question on "any of the occasions stated, was merely a desperate attempt "to escape from an awkward dilemma.

"(7) I find upon the evidence that the telephone communi- "cation between Mr. Rogers and Mr. Carter occurred between "the 16th and 24th days of August, 1911, at a time when Mr. "Rogers had the other tenders before him and that he gratuit-

"ously offered Mr. Carter the privilege of increasing his tender, "and Carter acted accordingly. As a result Carter's tender was "increased by \$8,700.

"(8) I also find that Mr. Rogers instructed his deputy, Mr. Dancer, to draw up a recommendation to Council, dated August "24th, 1911, and to insert therein as the amount of Carter's "original tender in answer to the advertisement for tenders, the "sum of \$68,929, contrary to the fact as known by Mr. Rogers, "and that an Order-in-Council was passed accordingly."

NOT SUSTAINED BY EVIDENCE

Your Commissioners have carefully and closely examined the evidence given by the Hon. Mr. Rogers, as well as the other evidence, both documentary and oral, referring to the same matters, and these findings of the learned Judge are not sustained by the evidence.

Before referring particularly to Mr. Rogers' evidence, your Commissioners desire to point out that Mr. Rogers was not represented by counsel. He was always under cross-examination by Mr. Phillipps. In saying that he was not represented by counsel, it is not desired in any way to intimate that he was prevented by Mr. Justice Galt from being so represented. He could have had counsel if he had so chosen. In point of fact, however, he did not have counsel; and as we have said, he was always under cross-examination. Your Commissioners also feel obliged to say that some of the cross-examination was very unfair. Mr. Phillipps in the course of his cross-examination misrepresented to the witness the contents or effect of documents in his possession. We will refer to a few instances, but others will be found throughout the evidence.

Mr. Phillipps had access to a diary kept by Mr. Hooper, which contained in his (Hooper's) own handwriting entries of his whereabouts on different dates in July and August, 1911. Indeed, Mr. Phillipps called and examined Mr. Hooper's son thereon. (p. 833).

From that diary it appeared that Mr. Hooper was at his office on the 26th and 27th of July, 1911, and at other dates in July, and on the 1st of August; also that he was out of his house and therefore could have been at his office on the 12th of August. Yet, Mr. Phillipps, having that knowledge in his possession, asked Mr. Rogers the following questions,—referring to the power house: (p. 797).

"Q. Well, now, they were accepted on July 26th, and on July "26th you were in Kenora, on your way to Montreal. Now, I "tell you—I suggest to you that the date may satisfy this Com- "mission that we have,—shows that Mr. Hooper—that is in "addition to not being in the office from the 12th of August on- "wards, was not in the office from the 23rd of July to the 30th, "so that you could not have had any conversation with him "then?

"A. I don't know about Mr. Hooper except that I know that "Mr. Hooper was ill and was not in the office regularly of "course.

"Q. The conversation of which you speak in which this "\$8,700 matter was raised, must have taken place either after "the 16th of August or some time before. Now, we know from "the data that is here that you were not in Winnipeg on July "28th, you were on your way to Montreal, and I think we will "be able to satisfy the Commission that Mr. Hooper was not in "his office from the 23rd of July onwards until the 30th. Now, "if that is so, then this is the point, that, it must have been sub-"sequent to August 16th, that this conversation mentioned took "place, and Mr. Dancer's letter would seem to indicate that?

"A. I am not prepared to say what the date was because I "don't know it, but I do know that it was on his recommenda-"tion that it was done, whenever it was. I certainly did not do "it on my own responsibility. I certainly did not do it on my "own motion."

SEVERAL MIS-STATEMENTS

There are several mis-statements in these questions: Mr. Rogers was not in Kenora on the 26th of July, nor was he on his way to Montreal. He was in his office in Winnipeg on the 26th, 27th and 28th of July as appears from the Telegraph Company's account (Exhibit No. 145), then in Mr. Phillipps' possession, which shows several telegrams sent by Mr. Rogers from Winnipeg on the 26th, 27th and 28th of July. Mr. Hooper was in his office between the 23rd and 30th of July. His son, speaking from his father's diary, said that he was in his office on the 26th and 27th of July. The diary as proved does not show he was not in the office on the 28th of July.

At another time Mr Phillipps examining as to some payments that were made to the Carter Co. on account of the Administration Building, put the following questions: (p. 829):

"Q. Now, were you aware that up to say August 31st, at "all events by September 15th, 1911, that on the Administration "Building, Carter-Halls had received \$82,000 in cash?

"A. Up to when?

"Q. I say were you aware that up to August 31st or at all "events by September 15th, 1911, that on the Administration "Building Carter-Halls had received \$82,000 in cash?

"A. I would not learn that.

"Q. Well, I can tell you that is correct. You needn't think "I am making an error about that, and subject to a further "check, my learned friend I think concedes that the total amount "of work they had done in labour and material on the ground, "did not amount to over \$65,000, so that they were very heavily "overpaid."

AMOUNT STATED INCORRECT

The statements in these questions set forth the amount incorrectly, and Mr. Phillipps had in his possession the documents which showed that the Carter Co. did not receive \$82,000 up to the 15th of September. The amount it had received to that date was \$45,463.50, and Mr. Phillipps, as your Commissioners have already said, had in his possession the documents which showed that. (See exhibits Nos. 45, 46 and 47.) This matter will be further considered, as Mr. Justice Galt makes some findings thereon.

Of course the Hon. Mr. Rogers speaking from memory could not tell what was paid.

Your Commissioners refer to these instances merely to emphasize the unfair manner in which the Hon. Mr. Rogers was examined by Mr. Phillipps. Various other instances might be given.

The Hon. Mr. Rogers in his evidence stated that the Carter Co.'s tender for the Power House was increased on the recommendation of the architect, Mr. Hooper; but he never at any time professed to be absolutely able to fix the date at which this conversation with Mr. Hooper took place. He did at first say that he thought it was shortly after the tenders were opened—within ten days.

Mr. Phillipps repeatedly and erroneously asserted that the evidence showed that Mr. Hooper was not in his office or available for business on the 27th or 28th of July; and that he, Mr. Rogers, was not in Winnipeg on the 12th of August, and that neither Hooper nor Carter had any knowledge up to the 16th of August of any such change.

Mr. Phillipps also in his questions to the Hon. Mr. Rogers stated that the letter of the 11th of August written to the Carter Company asking for a detailed statement, was written by the Architect (Mr. Hooper), when in fact it was written by Mr. McTavish; and that the letter enclosing the detailed statement from the Carter Co. was written by Mr. Carter, when in fact it was written by Aldinger.

The Hon. Mr. Rogers had in the early part of his testimony stated that the architect was in his office when he telephoned to Carter.

Mr. Justice Galt, after quoting three questions and answers from the Hon. Mr. Rogers' evidence, says at page 31 of the First Report as follows:

"By this time Mr. Rogers saw that his statement that 'Hooper was with him in his office when the telephone communication with Carter occurred, could not possibly be accepted 'at any date between July 26th and August 16th. He therefore 'gave the following evidence."

AN UNFAIR CRITICISM

This criticism of the Hon. Mr. Rogers' evidence seems to your Commissioners unfair. Your Commissioners will now refer to the

evidence quoted by Mr. Justice Galt, and to other evidence in the same connection.

Before making the above statement, Mr. Justice Galt quotes from the evidence three questions and answers as follows: (p. 31 First Report.)

"Q. But do you identify your conversation by the fact that "you have told us that whilst this matter was being explained to "you Hooper was present and you called up Mr. Carter. You "told us that?

"A. I think that is correct.

"Q. On the face of it, what I want to settle with you is that "on the 26th you accepted the tender. That was Thursday; the "next day was Friday. Is it your recollection that you changed "that contract on the 27th the day after it was accepted?

"A. I could not be definite about that.

"Q. You surely would not accept it on the 26th and change "it on the 27th and your deputy didn't know anything about it "two weeks later?

"A. It may have been discussed on the 27th and I left for "Montreal and nothing more done about it till I came back. "You can't expect me to remember events that took place five "years ago in the ordinary routine of business."

The order in which the evidence of Mr. Rogers is here quoted by Mr. Justice Galt would make it appear as though such evidence were given consecutively. In point of fact a good deal is omitted between the first question and the remainder so quoted, which your Commissioners think has a direct bearing on the matter.

Your Commissioners therefore deem it necessary to set out the evidence as quoted on page 31 of the Report, and also the context: (p. 842.)

"Q. But you do identify your conversation by the fact that "you told us that whilst this matter was being explained to you "Hooper was present and you called up Mr. Carter. You told "us that?

"A. I think that is correct.

"Q. And we know that Mr. Carter says it wasn't until after "August 16th?

"A. I don't know whether that is correct or not.

"Q. Well, Mr. Carter has told us so and your deputy.

"Mr. HOSKIN: No, he said you persuaded him from the "date that it must have been. He didn't pretend to fix the date.

"Mr. PHILLIPPS: Mr. Carter said that, having the docu- "ments put before him he was satisfied.

"The COMMISSIONER: Oh, yes; I think Mr. Carter "plainly took it that you had convinced him that that was the "time. He didn't profess to know exactly at the start.

"Mr. HOSKIN: He didn't profess to know at any time.

"Q. So that at this time, from that, it does appear that your "conversation on raising this contract \$8,700 must have been "after August 12th?

"A. I am not prepared to say that, because I don't really "know. I know that such a conversation took place, but I don't "know when. It must have been after the tenders were opened "—between that and the time they were let.

"Q. But you see Thursday was the 26th—the day you "accepted the tenders?

"A. But all that diary you have read explains nothing. Mr. "Hooper may not have gone to his office but he often came to "see me when he didn't go to his office. It wasn't in this build- "ing. It was at Strathcona Place.

"Q. But he was at home?

"A. He might have been at home and he might have come "down to see me too.

"Q. On the face of it, what I want to settle with you is "that on the 26th you accepted the tender. That was Thursday. "The next day was Friday. Is it your recollection that you "changed that contract on the 27th—the day after it was "accepted.

"A. I could not be definite about that.

"Q. You surely would not accept it on the 26th and change "it on the 27th, and your deputy didn't know anything about it "two weeks later?

"A. It may have been discussed on the 27th, and I left for "Montreal and nothing more done about it till I came back. "You can't expect me to remember events that took place five "years ago, in the ordinary course of business."

Mr. Justice Galt, after making the observation above cited from page 31 of his report, quoted the following evidence evidently with the object of attempting to show that the Hon. Mr. Rogers had come to the conclusion that his statement that Mr. Hooper was with him in his office at any time between July 26th and August 16th could not be accepted.

(Report p. 31 as taken from p. 846 of the evidence).

"Q. Well, you say you had only one conversation with him "and that was when Mr. Hooper was present?

"A. No, I did not.

"Q. Pardon me, that is the note?

"A. If I did, I would have to correct that, although he might "have been there. It is a very likely thing that I would call "him up at the moment when Mr. Hooper discussed the matter "with me.

"Mr. PHILLIPPS: I think I will have to ask your Lordship "to find that that conversation was subsequent to August 12th. "It could not be anything else.

"A. If by any chance I used the words that Mr. Hooper was "present at the time the telephone rang, that might be incorrect, "because I am not clear on that. I could not be expected to be "clear on it. If I used those words I would want to say that I "want to correct it. I am not sure that I did."

Mr. Justice Galt immediately quotes a question and answer from page 854 of the evidence as follows:

"Q. Naturally I would like to say also, Mr Rogers, if there "are any personal witnesses that you suggest that can throw "light on this matter, and would like to have called, I will be "glad to call them and examine them?

"A. I cannot see anything that requires any light. It is as "clear as the midday sun to me."

MR. ROGERS NOT CERTAIN

Before this last question was asked, the Hon. Mr. Rogers had given a great deal of evidence, all of which showed that he was not sure as to the time the conversation with Hooper took place, or the exact time he telephoned Carter. Your Commissioners will set out some of it, just following the question quoted by the learned Judge from page 846 of the evidence:

"Mr. PHILLIPPS: You see the point of that is: on the 26th "you were accepting tenders, and you certainly would not be "dealing with the cancellation on the 27th?

"A. If the architect came in and said it could not be done.

"Q. The conversation—there was only one conversation— "and it must necessarily have been—

"A. It might be quite possible. If I didn't, I left for Mont- "real—the matter would not come up again until I came back.

"Q. Didn't Mr. Hooper bring that up at the time you were "considering the tenders?

"A. At whatever time Mr. Hooper brought it up it was after "he had the opportunity of going over the other tenders that "were in.

"Q. Mr. Hooper must have done two things—gone over all "the tenders and recommended the acceptance—

"A. Oh, no; the tenders were opened say by Mr. Dancer "and myself.

"Q. Now, you were in Ottawa on the 18th?

"A. Listen to me. The tenders would be opened by myself "probably Mr. Dancer present. Evidently from what you have "read there, Mr. Dancer was present, and that he notified Carter "on the 26th that his tender had been accepted. No doubt Mr. "Dancer would at once transmit the tenders to the architect, "and the architect would go over them and at once report to "me if there was anything wrong, and his report was that this "work could not be done. Whether it was on the 27th or when "it was I am not prepared to swear, but it was very likely im- "mediately after.

"Q. All right. Just let me direct your attention to this on "that branch of it, that the architect evidently hadn't got the "data to enable him to deal with that contract until August 11th, "because he is giving information in respect to it as late as "August 11th.

"A. That might all be.

"Q. You see we have to have that architect making an ex- "amination into this contract on your basis.

"A. Your own argument answers yourself in that the "tenders were opened, and following the natural course of busi- "ness they would be in the hands of the architect probably the

"same day they were opened. If not—the following morning. "He had before him then the data supplied in each tender, and "in round figures Carter's tender was \$60,000, and he took the "ground that the building could not be built for that amount of "money, and he was supported in that by the other tenders, "and by the amounts estimated for their work for the different "trades, and Mr. Hooper, as I recollect it, was the man that had "the figures to show that it would take \$8,700 as an amount "sufficient to build this building at its actual cost."

ANOTHER MIS-STATEMENT

The assertion made by Mr. Phillipps in one of these questions is another mis-statement. The architect (Mr. Hooper) was not giving information or dealing in any way on the basis of the original tender on August 11th. The letter of that date was written by Mr. McTavish and not by Hooper, and there is no evidence that the latter knew anything about it at all.

The evidence then proceeds:

"Q. Now, Mr. Rogers, you were in Ottawa as shown by the "records on the 18th, the day the tenders were in, so you could "not have been in Winnipeg until about the 20th?

"A. I would not see the tenders till the day they were "opened.

"Q. Then they were not probably opened?

"A. They were not opened.

"Q. You think they were opened by yourself and Mr. "Dancer?

"A. Yes.

(Also at p. 850.)

"Q. Now, I want to remind you of this, that that tender you "accepted from Carter-Halls-Aldinger Company, Limited, and let "by merely a letter for the bulk sum of \$60,229, giving no details "whatever, now, how could the architect even intelligently "figure on that without knowing how they made that up.

"A. He could intelligently figure by reason of the fact that "he had his own estimate, and you should have it on the file. It "should be in existence on the departmental files, because every- "thing that was a matter of public record, so far as my own ad- "ministration of public affairs—Public Works Department— "were on the file. Everything connected with this matter so far "as I know was left on the file. There was nothing to hide. "Everything was absolutely clear.

"Now, then, the architect had before him the other "tenders that came in. He had before him Carter's bulk tender "for \$60,000 odd hundreds, whatever it was. He had all the in- "formation that he could want to satisfy himself whether that "building could be built for \$60,000 or not. He had his own "judgment. He had the judgment of the other tenderers that "had replied and he came forward to say that the work could not "be done for the \$60,000.

"Q. He did not say 'could not be done' on the 26th, because "you must have been acting on his recommendation in accepting "it.

"A. You don't understand me. I didn't act on his recommendation at all. It was sent out to the deputy and he "forwarded the usual notice. That is just a matter of routine "business that goes on.

"Q. You must have got your advise then from the architect as you say, either on the 27th or Saturday morning, because "you were away from Winnipeg on the 28th and didn't get back "till the 11th?

"A. I do not recollect the date.

"Q. There it is. It is only a day and a half you could do it "in.

"The COMMISSIONER: Would a contract like that be "accepted without the advice of the architect?

A. A contract is never really accepted until an order-in-council is passed by the government.

"Q. What is the object of sending in a formal acceptance "and letting a man go on with the work?

"A. That is a common practice, but I do not think the contractor should go on with the work until his contract is signed; "and he had never had his contract. He might have been notified that his tender was the lowest tender and would be accepted, "but he had no business to go on with his work until the contract was signed, and I am sure I was not aware that he was "going on with his work."

After some further evidence was given the last question quoted by Mr. Justice Galt on page 31 of the Report was asked the witness.

MR. ROGERS WAS RIGHT

A careful examination of all the evidence given by the Honourable Mr. Rogers leaves no doubt in the minds of your Commissioners that Mr. Rogers was right, and that Mr. Hooper did recommend the change of the tender.

The Hon. Mr. Rogers, at p. 767, on being examined with reference to the telegram that he had sent to Mr. Justice Galt on September 13th, was asked as follows:

"Q. Now, in the first paragraph of Ex. No. 129, Mr. Rogers, "you say in reference to the matter referred to by the Commissioner in Ex. No. 128; 'It is very manifest, however, that it "would not have been in the public interest to have awarded Carter the contract on the original tender for the power house, for "the reason that the work could not have been done under the "specification at the tendered price.' When did you first become "aware that such was the condition?

"A. Well, I presume by the information supplied me by the "Chief Architect's department.

"Q. Who do you refer to?

"A. Mr. Hooper, the Chief Architect."

Also see Hon. Mr. Rogers' Evidence at p. 776:

"Q. How was this \$8,700 to be arranged for?

"A. I think Mr. Carter was asked to put in a new tender for "the building.

"Q. Did you instruct that to be done?

"A. I telephoned him at the time when Mr. Hooper was in "my office and told him that his tender was too low, and I think "he came up.

"Q. Then the conversation that you speak of was when Mr. "Hooper was in your office?

"A. Yes, when he was in my office and I telephoned Mr. "Carter that his tender was too low and to come up to see Mr. "Hooper, as I recollect, but I don't remember seeing Mr. Carter "about it.

"Q. Mr. Hooper was present when you telephoned Carter "I understood you to say?

"A. Yes, Mr. Hooper was present when I telephoned Mr "Carter.

"Q. Did you have more than one conversation with Carter "with reference to this matter?

"A. No, I don't think so.

"Q. You don't recall any other?

"A. No, I don't recall having seen Mr. Carter.

"I think I saw Mr. Hooper only.

"Q. Now, did you have any conversation with Mr. Dancer?

"A. I don't remember whether I had or not.

"Q. Who would get the instructions to draw up the \$8,700 "contract? I mean by that who would add on that \$8,700 on the "contract in question?

"A. Mr. Dancer no doubt had those instructions from me. "I have no doubt I told him."

In corroboration of this your Commissioners would refer to Mr. Carter's evidence at page 513.

"Q. Now, between August 16th and August 28th apparently "that contract was increased up to \$68,929?

"A. Yes.

"Q. How did that come about?

"A. Well, some time between those dates, I do not remem- "ber exactly, Mr. Rogers who was then Minister of Public "Works, he called me up over the phone and he says, 'Mr. Carter, "was not that tender on the Power House low.' And naturally, "I said 'Yes.' 'Well, he said, 'I think the Government will help "you out.' Now, whether he gave me the amount or not at that "time I do not want to state, because I do not remember clearly. "Anyhow, we got the amount some way, and re-arranged our "tender and they forwarded our amended contract and we signed "it and returned it to them."

Also at page 514.

"Q. You proceeded to make out a tender which has been "put in here as Exhibit No. 1027?

"A. Yes.

"Q. That is signed by yourself?

"A. Yes. I cannot trace out whether they asked us for that "or sent it in voluntarily."

Later Mr. Carter at page 696 states as follows:

"A. But there is one thing that it might be well to say here "and that is that after hearing Mr. Dancer's evidence yesterday

"I may have at some time complained to Mr. Hooper. He and
"I were very close friends and I may have complained to him or
"I may not, and that is the only thing that the thing led up to."

The Hon. Mr. Rogers' statement is uncontradicted that Mr. Hooper advised him that Carter's tender was too low, and that it was on Hooper's recommendation that he (Hon. Mr. Rogers) telephoned to Carter.

From the whole evidence it is manifest that the conversation between Hooper and the Hon. Mr. Rogers took place before the Hon. Mr. Rogers telephoned to Carter.

Both Mr. Carter and the Hon. Mr. Rogers state that there was only one conversation between them on the subject of this tender for the Power House, and that conversation was over the telephone, in which the Hon. Mr. Rogers asked Mr. Carter to come up to see Mr. Hooper.

ENTIRELY CONSISTENT

It is entirely consistent with all the evidence that the conversation with and recommendation by Mr. Hooper took place either on the 27th or 28th of July or the 12th of August. From careful consideration your Commissioners believe that it was on the 27th or 28th of July. Hon. Mr. Rogers went to Montreal on the 28th, apparently late in the day from the number of telegrams the telegraphic account shows as having been sent by him on that date from Winnipeg. The fact that there was no recommendation made by the Hon. Mr. Rogers to the Executive until 24th of August and no Order-in-Council passed respecting the execution of the Power House contract until September 1st shows the matter was under consideration, and strongly supports Hon. Mr. Rogers' statement that Mr. Hooper had reported to him that the contract could not be completed for the original tender of \$60,229.

Attention is also directed to the fact that the Carter Co.'s tender was over \$11,000 below the next tenderer, and that the other three tenders were all close together.

One of the reasons upon which Mr. Justice Galt bases his finding that the conversation with Mr. Hooper never took place is this: the Counsel, Mr. Phillippo, repeatedly and erroneously asserted the evidence showed that Mr. Hooper was not in his office or available for business on the 27th or 28th of July or the 12th of August, and that neither Mr. Hooper nor Mr. Carter had any knowledge up to the 16th of August of any change—basing this latter contention apparently upon the letters of the 11th, 15th and 16th of August, which, as has been already pointed out, did not support that view.

Mr. Justice Galt has accepted these statements of Counsel as true, and in error has based his findings thereon.

(See First Report pp. 14, 19 and 42).

Mr. Carter also never stated the change was made subsequent to the 16th of August. The Counsel stated to him in questions to the effect that it was after that date, and the witness no doubt in good faith accepted it as correct, but did not himself profess to state or know the exact date.

This is supported by what took place between the Commissioner and Counsel on the examination of Mr. Rogers at pages 842 and 843, which has been already quoted.

Having regard to the fact that Hon. Mr. Rogers alleges that Mr. Hooper first brought up the matter of the tender being too low, and that the work could not be done for the money, and therefore recommended the increase. Another reason upon which Mr. Justice Galt evidently bases his conclusions that Hooper never did so, is, that he says the result of the work was that the Carter Co. made a substantial profit over and above the original tender, and his inference therefore is that Hooper being admittedly a capable and honest architect must have known that the price was sufficient, and would never have recommended an increase thereof.

"There was a statement of it for the Province made up by Messrs. Price, Waterhouse & Company from the Carter Co.'s books, for the purpose of the Inquiry before Mr Justice Galt. This with sundry attached papers is in evidence as Exhibit No. 274. Therefrom it appears that taking the work at the increased contract price of \$68,929 with the extras as paid for of \$40,782.32, it resulted in a net profit of \$10,303.58, subject to certain deductions as hereinafter mentioned.

THE CARTER CONTRACT

If, however, the Carter Co. had taken the work at the original tendered price, they would have received from the Government \$60,229.00

Also the extras as paid for 40,782.32

\$101,011.32

But the Carter Co. before the Commission to Mr. Justice Galt was issued at all, had refunded to the Province, as moneys improperly received in respect of this contract. \$3,270.60

This Company has also been found by Mr. Justice Galt in his report to have improperly received the following amounts in respect of this work, which they must return to the Province, namely:

(p. 6, First Report) \$ 788.00
344.00
647.77

At page 34 of the First Report	\$1,171.80
	360.30
	2,679.35
	257.60
	1,813.00
	<hr/> 11,332.42

This leaves \$89,678.90

as the amount of money the Carter Co. ought to have received in the fair and honest carrying out of the contract, in the manner which Mr. Hooper would have contemplated.

The actual cost of the work disclosed by the Auditor's statement (Exhibit 274) as elucidated by the evidence of Mr. Rowbotham, the Manager, (pp. 1781-1805), was \$96,137.19

But this does not include anything for management and other overhead expenses in respect of which the auditors say 2 per cent. would be a fair charge, or 2,020.00

\$98,157.19

This amount, as Mr. Rowbotham explains includes the election contribution which was charged to the construction of this work. It is really no part thereof, and should be deducted..

7,500.00

Leaving as the cost of construction including extras 90,657.19

As above shown the Carter Co. would have received at the original tendered price including extras 89,678.90

Leaving a loss of \$ 978.29

NO EXCESS PROFITS

Where is the alleged substantial or any profit that would have been made on the original tendered price? There is none.

The claim of the Government of Manitoba was that excessive profits were made in extras. If as we assume that on these extras the Carter Co. made only the ordinary profit of 15 per cent. it would amount to \$6,117.00.

Now, if the extras resulted in a profit of at least this amount, and if on the whole work, contract and extras, there was a loss of \$978.00, it is clearly manifest that on the original contract alone there would

have been a loss of the aggregate of these amounts or over \$7,000, or approaching what Hon. Mr. Rogers said that Mr. Hooper told him.

Mr. Justice Galt has taken the figure of \$68,929, the final contract figures, together with the extras, and proceeds upon the basis that inasmuch as the Carter Co. made a profit thereon, they would also have made a profit on the \$60,229 contract, which is of course erroneous.

To make the matter worse, he then proceeds to charge against the contractor amounts aggregating upwards of \$11,000 to be refunded to the Province, which must necessarily result in a loss; and yet still adheres to his statement that the Carter Co. would have made a profit on the original tender.

The contrary is the case, and thereby shows the reason why Hooper would have recommended the increase, and therefore justifies the statement of the Hon. Mr. Rogers that it would not have been in the public interest to have awarded Carter the contract on the original tender.

The learned Judge after referring to the increase of the contract amounting to \$8,700 and also to the two cheques given by the Carter Co. to Sprague, amounting to \$7,500 further finds (p. 45 First Report):

"The circumstance attending these transactions led to an irresistible inference that the increased tender allowed by Mr. Rogers and the unusual contributions to the campaign fund, amounting to \$7,500 made by the Carter Co., were directly connected, whereby the fund was augmented and the Carter Co. received the benefit of the \$1,200, while the Province lost the entire sum of \$8,700."

This finding is not supported by the evidence. Indeed, it is contradicted by all the testimony that was given with reference to the contribution. In the first place Mr. Carter in his examination said that he had been in the habit of contributing to the election funds ever since they had been in business.

Mr. Carter was examined in reference to this matter and absolutely denied that his contribution to the election fund had any connection with the increase in the contract:

At p. 516 he says:

"Q. You then went on and executed this contract for \$68,929. Now, did anybody apply to you for any payments in connection with that contract?

"A. No, Sir.

"Q. Did you pay out any money? To any person in connection with that contract I mean?

"No, Sir.

"Q. Did you make any contribution shortly after that conversation to any campaign fund?

"A. Yes, I think we did.

"Q. How much did you contribute?

"A. Well, I think we contributed \$7,500.

The witness then proceeds to state that he contributed \$7,500 by two cheques to Mr. Sprague, on the 18th and 20th of September respectively.

(Also at page 585.)

"Q. Well, now, did you ever have any conversation with Mr. Rogers with regard to contributions to the party funds?

"A. Absolutely none.

"Q. You never had any such conversation with him?

"A. No, Sir, Mr. Rogers never asked me to contribute a five cent piece to any fund of any kind or to anybody.

"Q. Now, this amended contract was made when—in September wasn't it?

"A. No; I think it was really arranged along in August some time.

"Q. Arranged in August?

"A. Yes; the latter part of August.

"Q. Then when was it that Mr. Sprague waited on you to get his contribution from you?

"A. I think the cheques show about the 18th or 29th of September.

"Q. Was there any connection between those amounts that you gave and this increase on the contract?

"A. No, sir, not on my part.

"Q. Not on your part?

"A. No,

"Q. You didn't see any connection?

"A. No, sir, I gave the money to the campaign fund, and I didn't have to give it on this contract or anything. I had my contracts all signed and I was working there.

"Q. Yes, but you had just received an addition—an unexpected addition to your contract of \$8,700?

"A. Yes, well, there was never anything took place between myself, Mr. Sprague, Mr. Rogers or anybody else that would link these two up to my knowledge.

"Q. Not even to your own mind?

"A. Well, I might have thought that it would work out in some way, but I don't think so."

(Also at page 521.)

"Q. Now, the contributions you made to campaign funds didn't cease at the Dominion elections. Didn't you make some contributions subsequently to provincial elections?

"A. Oh, yes, we have contributed to campaign funds off and on practically ever since we have been in business.

"Q. Ever since you have a contract you seem to have been a sort of mark?

"A. I think we possibly contributed a little before that."

KNEW NOTHING ABOUT IT

Mr. Sprague, to whom the contribution was made, and who was the president of the Sprague Lumber Company, knew nothing about the change in the contract. He was making collections for an election fund, and called on Mr. Carter the same as on other men doing busi-

ness in Winnipeg. He gave the names of a number of men called on, mentioning the name of one man who, he said, had no contract with the Government, and who had contributed \$2,000. He stated (p. 530) when asked how he came to go to Mr. Carter:

"Because I regarded him as a supporter of the party I supported and thought he would contribute to the funds."
At page 654 he is asked about the Campaign Committee:

"Q. Was Mr. Rogers on that Committee?

"A. Not that I know of, I never knew of him being on an election commission.

"The COMMISSIONER: I was anxious to know whether you had any communications with Mr. Rogers about that time?

"A. No, none whatever.

"The COMMISSIONER: Was he actively engaged in that election?

"A. Oh, not specially that I had any knowledge of.

"The COMMISSIONER: Did you see him at all in connection with the progress of the election?

"A. No, not specially, no sir.

"Q. What do you mean by 'not specially'?

"A. Well, Mr. Rogers was in town the same as lots of other citizens. I might see him, and to say I didn't see him during the election would probably be not correct, but to say I didn't see him in reference to any matters of this kind or the election generally would be quite correct.

"Q. What part was he taking in the organization?

"A. I don't know. None that I know of.

"The COMMISSIONER: We were endeavouring to ascertain last session how it was you came to go to Mr. Carter and ask him right off the reel, as it were, for \$5,000?

"A. Well, I don't know I asked him especially for \$5,000, I asked him for a contribution.

"The COMMISSIONER: Well, you have had two days to consider that. Had you no intimation either from Mr. Rogers or anybody else of the likelihood of Mr. Carter being quite willing to pay such a sum.

"A. I didn't collect all the campaign fund, and I don't think it is proper for me, if I had a recollection, to say that certain prominent conservatives had contributed and the amount they had contributed. Now, there were other conservatives probably belonging to that committee and who were interested, who collected money the same as I did. I probably went to Carter because I knew him, and he was a customer of mine, and I went to him because I thought he would contribute.

"The COMMISSIONER: My reason for asking you particularly is this: You knew he had a contract with the Government?

"A. Yes, I knew that.

"The COMMISSIONER: You now perceive on the evidence that that contract was amended shortly before the time you went there by increasing Mr. Carter's tender by \$7,500?

"A. I knew nothing of that. I didn't know as a matter of fact that he had the power house contract.

"The COMMISSIONER: Then you go to him and get the \$7,500 from him?

"A. Yes, that is what I did.

"The COMMISSIONER: You are unable to give a reason?

"A. As far as I am concerned, absolutely none. As a matter of fact, I didn't know Mr. Carter, I think, had the contract for the power house at that time.

"Mr. PHILLIPPS: You told me yesterday you hadn't collected subscriptions from him before. Did you ask him for \$5,000 or did he offer \$5,000?

"A. I forget just the details.

"Q. He said in his evidence that you asked him for \$5,000?

"A. Well, that may be his recollection of it and I would not dispute it. I may have suggested that amount, and I may not.

"Q. What seems to me strange is that you would go to a man who was a stranger to you as far as contributions were concerned. You knew him personally, but he was a stranger to you as to contributions. Then you fix on \$5,000 as a standard that he should come up to?

"A. I don't see anything extraordinary about that. I asked for a contribution, and that is the amount we arrived at."

The Hon. Mr. Rogers in his examination made the following statement: (p. 813.)

"A. I want you to understand there was no change made for any ulterior motive as has been suggested during this investigation, and I want to say that during the twelve years that I was Minister of Public Works, I built many buildings in this province, and had to do with many contractors, and I want to say that there is no man that can come forward and say that I ever suggested or implied in any way the exacting of anything from any contractor, and whatever the circumstances surrounding this particular contract, my motives were none other than to do the best in the public interest, and I had no other motive."

NO SUGGESTION MADE

The Hon. Mr. Rogers in his telegram of September 13th in answer to that sent him by Mr. Justice Galt, said as follows:

"As to any contribution by Carter to Dominion fund during reciprocity contest, I am certain that he will acknowledge under oath that I never mentioned or suggested in any way contribution to party fund, and I hope you will see that this question is asked him."

Mr. Justice Galt in his report (p. 18) says:

"This question was duly put to Mr. Carter, as requested, and he answered in conformity with Mr. Rogers' statement."

Outside of this evidence to which your Commissioners have referred, the circumstances surrounding the matter are entirely

against the finding of the learned Judge. If the contract had been increased by \$8,700 in order that the Carter Co. would make a contribution to the election fund, there would have been no necessity for Mr. Sprague's going twice for the amount, and instead of getting \$7,500 he would have got the whole amount of the increase of \$8,700.

Mr. Carter himself appeared to be a very frank and candid witness. indeed Mr Justice Galt during the course of the argument, speaking of Mr. Carter says as follows:

"Mr. Carter was a very very frank and candid witness."
And in his First Report, speaking of Mr. Carter, he says: (p. 8.)

"He attended all the proceedings relating to his firm's contracts, and gave evidence in respect to them, and his whole demeanor throughout was that of a frank and truthful witness, although liable like all men to make mistakes."

In the face of this opinion of Mr Carter as expressed by the learned Judge, it is difficult to see why he came to the conclusion he did, as it practically finds that instead of Mr. Carter being a frank and candid witness, he had actually committed perjury. Your Commissioners can arrive at no such conclusion.

To show that there was no fraudulent or improper intent in the increase of the tender, it seems to your Commissioners only necessary to refer to the fact that all the papers relating to or leading up to the contract were on file. The first tender for \$60,229 and the first draft contract sent to the Carter Co. for that amount were left on file, and marked across the back "Cancelled." There was no suppression of any of the facts relating to the two tenders. If there had been any fraud intended to be practised, this course would not have been followed.

Your Commissioners desire to call attention to what is evidently a mis-print on page 16 of the First Report in the quotation given by Mr. Justice Galt from Mr. Carter's evidence. Mr. Carter was being examined as to the \$2,500 cheque given on the 20th of September. He is asked as follows: (pp. 517-518.)

"Q. I see that is signed by Frank E. Halls, and counter-signed by yourself?

"A. Yes.

"Q. For \$2,500 on September 20th. That would be the night before election?

"A. The day before.

"Q. And that apparently is Mr. Sprague's signature?

"A. I would not swear to it."

In the learned Judge's report (p. 16) as furnished to your Commissioners, the Hon. Mr. Rogers' name is used instead of Mr. Sprague's name, and the question there appears:

"Q. And that apparently is Mr. Rogers' signature?

"A. I would not swear to it."

A REGRETTABLE MISTAKE

The Hon. Mr. Rogers' name was not on the cheque at all. This may be a mis-print, but it is a regrettable mistake because anybody reading the report, as furnished to your Commissioners, would assume that the Hon. Mr. Rogers' name was on the cheque.

Mr Justice Galt on page 17, 1st Report, after speaking of the contribution of \$7,500 by the Carter Co. says as follows:

"The substituted contract for \$68,929 was received by the "Carter-Halls Company on the 7th of September, 1911, and a "few days later, i.e., on September 13th, the Carter-Halls "Company secured a contract for extras on a portion of the "power house, amounting to \$7,720."

The object of the Counsel conducting the inquiry appeared to be to endeavour to establish that the addition to the contract and the contract for 'extras took place before the contribution was made, and the Counsel therefore asserted several times that the extras were arranged for on the 13th of September.

In point of fact, the documents in the hands of Counsel and then before Mr. Justice Galt shows that the tender for the extras was made on the 13th September (see Exhibit No. 117), but was not accepted until the 25th of September, (see Exhibit No. 120) being four days after the election had taken place. It nowhere appears that the Hon. Mr. Rogers personally authorized or sanctioned such extras. Mr. Carter in his evidence (p. 557) says this: "these extras were ordered on the recommendation of the Provincial Architect."

So far as your Commissioners are able to ascertain from the evidence, this extra and the change from lime mortar to cement, were the only extras that were let to the Carter Co. up to the time the Hon. Mr. Rogers ceased to be Minister of Public Works of Manitoba, and the overcharges that have been found by Mr. Justice Galt, as made by the Carter Co. appear to have taken place after the Hon. Mr. Rogers ceased to be a member of the Government.

Mr. Justice Galt on page 38 of his First Report finds as follows:

"The condition of affairs in the Department of Public "Works during the year 1911 and subsequently was extremely "lax. Samuel Hooper, the Provincial Architect, was in bad "health from the month of March until his death in October."

The Hon. Mr. Rogers retired from the Government of Manitoba on the 9th of October, 1911. There is no evidence of any laxity or

negligence during his period of office. The learned Judge in his First Report gives only one alleged instance (see page 39) in connection with which he states as follows:

"In one instance it was shown to Horwood that a pro-gress estimate in connection with the Administration Building had been put in, claiming on the basis of \$94,000 worth of work and material. As a matter of fact, only \$65,000 worth of work and material had been furnished, yet Carter was paid over \$80,000 on this estimate."

Your Commissioners propose to refer more particularly to this in a subsequent part of this report, but desire to say here that although the contractors had put in an application on the 31st of August, 1911, showing or claiming they were entitled to be paid over \$82,000 net for the work done and material; yet as a matter of fact only \$45,483.50 had been paid on account thereof up to the time stated by Counsel and found by the Commissioner; namely 15th September, 1911; and the Counsel and Mr. Justice Galt had possession of or access to documents so showing; namely, Exhibits Nos. 45, 46 and 47.

Mr. Justice Galt further states on page 39 of his First Report:

"For the purpose of the election as has been already shown the Carter Co. had contributed \$7,500 to the campaign fund. In the succeeding years this practice was continued. Every government contractor at the Agricultural College seemed to realize that it was to his interest to contribute to the campaign fund to a much greater extent than he had ever done before."

According to the evidence no contributions were made by any contractors during the time the Hon. Mr. Rogers was in office, excepting the \$7,500 paid by Carter Co., of which Hon. Mr. Rogers had no knowledge, and there is no evidence of any contribution by any other contractor during that period, nor is it shown that Thomas Kelly & Sons who were the largest contractors on the buildings, ever contributed a dollar at any time.

Mr. Justice Galt also at page 41 of the First Report, referring to the fact that the Carter Co. would make a large loss on the Administration Building as being one of the reasons given by Mr. Rogers in respect to increase of the tender for the Power House, says as follows:

"As a matter of fact, the Carter Company had already obtained a change in the plans of the Administration Building which was worth some \$6,000 to the Carter Company, over and above their estimate of cost."

The evidence does not establish that the Carter Company had then obtained a change in the plans of the Administration Building. No change in the plans or specifications had been made so far as is disclosed by the evidence. The specifications provided that the floors should be of Clinton or other approved system, and the architect approved of the Johnson system as being equally good, but which it appears cost less money, but there was no change made in the plans and specification, and it did not appear that Mr. Rogers had personally anything to do with the approval of the Johnson system instead of the Clinton.

Your Commissioners under the evidence find that the Architect, Mr. Hooper, did recommend the increase of the Carter Co.'s tender for the Power House by \$8,700; and further that there was no connection between the increase of the tender and the contribution of \$7,500 by the Carter Co.

Your Commissioners have thought it best to deal separately with each of Mr. Justice Galt's reports.

We shall now proceed to deal with his Second Report.

RE SECOND REPORT CONSPIRACY

On this Report, insofar as it relates to the Hon. Mr. Rogers, Mr. Justice Galt finds a fraudulent conspiracy was entered into between the Hon. Mr. Rogers and Thomas Kelly, senior member of Thomas Kelly & Sons, to obtain moneys from the Provincial Treasury for the purpose of a campaign fund and for the personal benefit of Thomas Kelly and his firm, (See 2nd Rep. pp. 42 and 46.)

In seven paragraphs set out on pp. 35 to 41, Mr. Justice Galt states a number of transactions which he finds establish such conspiracy. Your Commissioners differ entirely from Mr. Justice Galt as to the effect of such transactions, and as to the findings that should be based on the evidence relating thereto. Your Commissioners find that under the evidence no such conspiracy has been made out.

Your Commissioners will therefore discuss, seriatim, the said seven paragraphs, and the matters stated therein.

SECOND REPORT. Par. 1, Page 35.

"1. In August, 1910, Mr. Rogers negotiated the purchase of the site for the Agricultural College and lands in connection therewith, resulting in an agreement of sale, dated September 3rd, 1910. This transaction was carried out in secret, and about the same time a large quantity of lands adjoining the College were instructed to be purchased and placed in the name of Mr. R. A. C. Manning. Amongst the persons in-

"terested in these adjoining lands, as I have already found, "were the Hon. Robert Rogers, the Hon. J. W. Howden, and "the Hon. G. R. Coldwell."

The land for the Agricultural College was purchased in two lots Mr. Justice Galt, however, refers to only one. On page 45 of the Second Report it is stated as follows:

"The acreage acquired by the former Provincial Government "in September, 1910, for the purpose of the College was 461 acres, "costing \$350 per acre, and an additional sum of \$31,065.88, to "clear it of scrub."

A somewhat similar statement will be found on page 27 of the Second Report.

The facts relating to the purchase of these lands, as shown by the evidence, are that some time in August, 1910, the Hon. Mr. Rogers sent for J. W. Briggs, of the firm of Oldfield, Kirby and Gardiner, and pointed out to him a lot shown on a plan and told him that the Government wished to purchase it. This lot had been listed for sale with Mr. Briggs' firm by Mr. Simpson, of the firm of Simpson, Mitchell & Ewing, representing the Western Financial Company, the owners of the property. Mr. Briggs communicated with Mr Simpson, who placed the price at \$450 per acre. (See p. 3672). The Hon. Mr Rogers refused to pay that price, and after some negotiations, it was reduced to \$350 an acre. Mr. Simpson saw the Hon. Mr. Rogers himself and the agreement of sale at that price was reached on the 1st of September, 1910. (See Exhibit 599). The formal agreement of sale was executed on the 3rd of September, 1910, (Ex. No. 596) and a deposit of \$25,000 was made by the Government. The lot was supposed to contain 500 acres, but on a survey being made it was found to contain only 461.92: (See first part of Ex. No. 596). These are the lands referred to by Mr. Justice Galt.

The second lot was owned by a Mr Joseph LeCompte, and comprised about 115 acres. The evidence does not disclose who acted on behalf of the Government in this transaction; but it was purchased from LeCompte, so far as your Commissioners can tell from the evidence on the 3rd of September, 1910. The price paid was \$40,344 or about \$350 per acre. (See p. 4027).

MR. ROGERS' MEANING

It is important to note again that the negotiations for the first lot were in August and that the sale was closed on the 1st of September. During the negotiations for the first lot Mr. Simpson said that the Hon. Mr Rogers asked him to keep it quiet, as they might want to secure some other property. In answer to questions he said as follows:

(See page 3675.)

"Q. Was there any discussion between yourself and Mr. Rogers as to whether or not the matter should be made public for some little time?

"A. I believe Mr. Rogers asked me to keep it quiet as they might want to secure some more property.

"Q. You say you believe Mr. Rogers asked you to keep the matter quiet as they might want to secure some more land?

"A. Yes.

Mr. Justice Galt from the foregoing draws the inference that Hon. Mr. Rogers was thereby requesting that the matter might be kept quiet with the intent that he and his associates might secure some other lands adjoining or in the vicinity. Your Commissioners, however, are of the opinion that the fair meaning of the words "that they might want to secure more land" is, that the Government might want to secure more land. The Hon. Mr. Rogers was then acting on behalf of the Province, and if it be borne in mind that this conversation with Simpson must have taken place in August, and that the Government did afterwards, early in September, purchase the LeCompte land—an important factor which Mr. Justice Galt ignores—it makes the matter perfectly clear, and disposes of the suggestion of anything improper to be inferred from the fact that the transaction relating to the purchase of the first lot was asked to be kept quiet, which Mr. Justice Galt refers to as "carried out in secret."

Mr. Bridges, of the firm of Bridges & Waugh, at page 4203 says that the Hon. Mr. Rogers told him to buy a lot of land for him. This was a small lot or lots containing 43.22 acres, owned by Alfred A. Zimmerman, having been purchased by him from W. H. Sproule and W. B. Chambers. (pp. 4486-4487-4488). These lots will be referred to as the "Zimmerman lands." The Zimmerman lands adjoined those acquired for the College, and were sold at \$600 per acre, and \$6,000 additional for the buildings thereon. (See Exhibit No. 701.)

In connection with this sale, Zimmerman on the 3rd of September, 1910, gave an option to one "John Anderson" (who did not exist), through W. H. Sproule, who was presumably acting for Bridges or Manning. Subsequently the title passed from Zimmerman to R. A. C. Manning. It does not appear why the option was taken in the name of "John Anderson" instead of Bridges, or Sproule or Manning. Nor is it shown that the Hon. Mr. Rogers knew anything about the option. All that is disclosed is that Hon. Mr. Rogers asked Mr. Bridges to purchase it for him, and it was purchased at \$600 an acre.

Zimmerman was called as a witness with reference to this transaction. He said he purchased these lands in 1908 and 1909 and gave \$325 an acre for them. After he acquired them, he erected certain buildings thereon, costing him between five thousand and six thousand dollars; for which buildings on the sale he received \$6,000 in addition to the \$600 per acre for the land.

On being examined with reference to what amount he had received for the land on this sale, Zimmerman states at page 4497 as follows:

"Q. Was that the actual money that you got—\$600 an acre?

"A. Yes.

"Q. Did you actually get that?

"A. Yes.

"Q. Did you give any back to any person?

"A. No.

Exhibit No. 701 shows the whole transaction.

Some other lands in the vicinity were purchased in the name of Mr. Manning. Mr. Justice Galt referring to the transactions at page 27 of the Second Report states as follows:

"Zimmerman also was called as a witness, and stated that 'property consisted of lots 1 to 4 in block 1; lots 1 and 2 in block 2, and part of lots 4 to 7, St. Vital, having a total acreage of 43.22. He states that the first person who approached him with 'a view to buying the land was F. M. Sproule, and it was 'Sproule who took the option in favour of 'John Anderson.' 'The first time that Zimmerman heard of Mr Manning's interest 'in the purchase was from his lawyer, when he received a memorandum from him, showing 'Sale of above property to R. A. C. Manning by A. A. Zimmerman, September 3rd, 1910.' This 'was the same date upon which Mr. Rogers' agreement on behalf of the Government was dated. It was subsequently shown 'that the total acreage purchased and placed in the name of 'Mr. Manning was 1,240 acres; while the lands of the College 'were 461.92 acres. The Government paid \$350 per acre for 'the College lands, and also \$31,065.88 to clear them of brush. 'The adjoining lands were purchased at about \$179 per acre. 'Plan (exhibit 872) shows the College lands marked in blue; 'Mr. Manning's lands being marked in red. Mr Robert Young, 'manager of the Investment Department of the Canada Life Insurance Co., a gentleman with the highest qualifications as 'a land valuer, stated that the lands acquired for the College 'were not worth more than \$50 per acre, as farm lands.

A MISLEADING STATEMENT

The above statement is misleading, contains a number of inaccuracies, and does not properly represent the facts:

(1) There is no evidence that any lands adjoining those acquired for the College were purchased for \$179 an acre.

(2) It does not correctly state the quantity of land acquired for the College which was between 575 and 600 acres, instead of 461 acres.

(3) The memorandum referred to as "Sale of above property to R. A. C. Manning by A. A. Zimmerman, September 3rd, 1910," (Exhibit

No. 701) shows that it was sold for \$600 per acre exclusive of buildings—while the inference to be drawn from the statement of Mr. Justice Galt is that they were sold for about \$179 per acre.

(4) The sale of the first lot of the College property was negotiated in August, closed on September 1st, and the final formal agreement of sale was dated the 3rd of September.

Mr. Justice Galt refers to Zimmerman being called as a witness. It would have been manifestly fair to have stated in that connection that Zimmerman swore he received \$600 per acre for these lands adjoining the college, exclusive of the buildings; but Mr. Justice Galt, neither in this statement, nor anywhere in either of his reports, refers to the fact that \$600 per acre was paid for these lands but leaves the inference that only \$179 or thereabouts was paid for them. Furthermore Zimmerman himself made no complaint but appeared to be perfectly well satisfied with the sale.

Mr. Justice Galt in the foregoing statement refers to the fact that Mr. Robert Young, manager of the Investment Department of the Canada Life Insurance Company, a gentleman with the highest qualifications as a land valuer, stated that the lands acquired for the College were not worth more than \$50 per acre as farm lands.

These lands, however, were not held as farm lands. The very fact that Mr. Zimmerman in 1908 and 1909 paid \$325 an acre for his lots would indicate that the lands in that vicinity were not being held as farm lands. In point of fact it is stated by several witnesses they were known as suburban properties.

With reference to the other lands acquired by Mr Manning, they were not adjoining the Agricultural lands, or at all events only a very small amount was adjoining,—some of them were two miles away. They were purchased in different lots and at different prices.

Mr. A. R. Wilkes, a barrister of Winnipeg, was called as a witness, and stated that he had made searches in the Lands Titles Office with reference to these lots, and gave the following evidence:

(See page 5568.)

"Q. For instance, lot 99, take that as a result. It shows "34.77 acres, doesn't it?

"A. Yes.

"Q. How much does that appear,—how much did Mr. Manning pay for that per acre?

"A. \$91.00 an acre.

"Q. Now, let us go right up next to the College, that is "lot 121, isn't it?

"A. That is lot 121.

"Q. Looking at the figures on the bottom, lot 121 contains "how many?

"A. Approximately 65 acres in that portion.

"Q. How much did Manning pay for it?

"A. \$205.00.

"Q. Now, go on the North side, that will be lots 8, 9, 10, 11.
"They are covered in one sale?

"A. 8, 9, 10 and 2½ chains in 11.

"Q. For that he paid \$410.00 an acre?

"A. \$410.00.

"Q. Now, then, for the stuff immediately next to the College. How much did he pay for that?

"A. That is subdivided in that plan 1279, that is shown in "three parcels. One portion he paid \$240 for, another portion "\$330, and the other portion apparently \$330.

"Q. I am instructed the value of that was \$175.

"The COMMISSIONER: What was the Zimmerman "property?

"A. If I remember rightly it was contained in one of these "parcels.

"Q. The Zimmerman property is in Block 1, lots 1 to 4, "and lots 1 and 2 in Block 2. Now where is that on your plan?

"A. 26.5 acres, the total contained in that transfer.

"The COMMISSIONER: Does it appear what was paid for "the Zimmerman?

"A. Yes, my lord, \$330 an acre."

ABSOLUTELY INCORRECT

The statement as to what was paid for the Zimmerman property is absolutely incorrect. Mr. Zimmerman was on the stand and swore that the price at which he sold it was \$600 an acre, and the statement of the whole transaction (See Ex. No. 701) shows not only the price at which Zimmerman sold the property but the price at which he purchased it.

Your Commissioners are unable to ascertain how Mr. Justice Galt arrived at an average of \$179 an acre for 1,240 acres. Mr. Wilkes was recalled and asked with reference to certain lots purchased by Mr. Manning. From the evidence they appear to be lots shown on the plan and numbered 8, 9, 10 and part of 11. On page 5595 he is asked as to the acreage, and says:

"Q. How much was the acreage?

"A. The acreage was 464.5, and dividing that into the consideration . . .

"Q. What was the total consideration?

"A. \$83,040.

"Q. And dividing that makes how much per acre?

"A. \$179 approximately.

During the taking of the evidence objection was made on behalf of Manning and others to inquiring the price of the adjoining lands as being beyond the scope of the Commission.

Your Commissioners gather that the reason the evidence was admitted was that it might tend to show that too much was paid for the

Agricultural lands: and your Commissioners are of opinion that that would be the only reason for admitting such evidence. Nevertheless, Mr. Justice Galt does not find that too much was paid for the Agricultural lands, and the evidence does not show that too much was paid for them. On the contrary the evidence discloses that the Government obtained the lands at very reasonable prices.

Mr. Justice Galt finds that the Hon. Mr. Rogers and two other members of the Government were interested in what he terms the "adjoining lands."

There is no evidence to show that Hon. Mr. Rogers was interested in any of them except the 43.22 acres purchased from Zimmerman.

Your Commissioners further say that there is no evidence and no finding that too much was paid for the College lands. There is no finding, no evidence, and no suggestion that Mr. Rogers or any member of the Government was interested in the lands purchased for the College, or the moneys paid therefor; and there is no evidence and no suggestion that Kelly was interested in any way in either the adjoining lands or in the College lands.

NO CONSPIRACY ESTABLISHED

The purchase of these lands under the circumstances detailed in the evidence does not establish or tend to establish a conspiracy.

SECOND REPORT, Par. 2, Page 36.

"(2) The buildings connected with the College were commenced early in the year 1911. The estimate of their cost, which had been obtained by Mr. Rogers from the Provincial Architect in December, 1910, amounted to \$957,000.00. Yet "before October 1st, 1911, the Government had already awarded "contracts to the extent of \$1,103,229.00, and had ordered extras "to the extent of \$65,009.98."

Your Commissioners have already pointed out in their review of Mr. Justice Galt's First Report, that the buildings as actually contracted for and built, were much larger, more numerous and more expensive than those estimated. The first contract that was let was a contract to the Carter Company for the Administration Building, the cost of which was estimated at \$135,000; whilst the lowest tender for it was \$229,000: and the first contract let to Kelly & Sons was very much higher than the original estimate, and the learned Judge says on the first page of his Second Report:

"As the main contracts were all subject to tender, it was "unlikely that any substantial fault could be found with the "prices charged."

As there were so many changes after that estimate was made, whereby the scheme was changed and the buildings were increased in number and size, it is difficult to see how the simple fact stated by the learned Judge is any evidence of a conspiracy as the buildings necessarily would cost very much more than the estimates.

SECOND REPORT, Par. 3, Page 35.

"(3) The Carter Company having obtained a contract for "the erection of the Power House for the sum of \$60,229.00, Mr. Rogers, between August 16th and 24th, 1911, gave the Carter Company a gratuitous increase of \$8,700.00 in respect of their "contract, and he transmitted to the Executive Council a recommendation setting forth, contrary to the fact as known by him, "that Carter's original tender, which had been accepted on July "27th, was \$68,929.00. On September 18th, 1911, three days before "the Dominion election, D. E. Sprague, treasurer of the Conservative Committee, went to Carter and obtained a contribution to the campaign fund of \$5,000.00; and on September 20th, "Sprague obtained from Carter a further contribution of "\$2,500.00."

Your Commissioners have already found on the evidence that the raising of that contract by \$8,700 was not a "gratuitous increase" of \$8,700 by the Minister, but was made on the advice of the Architect, and it had no reference whatever to the contribution by Carter to the campaign fund. Indeed it appears clearly from the evidence that the Hon. Mr. Rogers knew nothing about Carter's contribution to the election fund.

A PROPER RECOMMENDATION

Your Commissioners think that the recommendation to Council made by the Hon. Mr. Rogers was a proper recommendation to make in view of the fact that the Architect had advised him that the original tendered price was too low, and that it should be increased by \$8,700. This advice of the Architect, together with the fact that the original tender was the original draft contract and the correspondence relating thereto were left upon the files of the Department, shows that there was no intent to deceive.

SECOND REPORT, Par. 4, Page 35.

"(4) During the year 1911, Mr. Rogers appears to have "taken the Agricultural College under his special charge, not "only as regards the buildings themselves but as regards the "payments to be made for land acquired and work done. The "payment of moneys naturally belonged to the Department of "the Provincial Treasurer. Mr. Philipps pointed out several "instances in which cheques for large amounts were signed by

"Mr Rogers as Acting Treasurer when the Treasurer himself or "his deputy might just as well have signed them."

Then the learned Judge refers to five cheques which were signed by the Hon. Mr. Rogers, as acting treasurer.

The first was dated the 14th of September, 1910, for \$25,000. That was the first payment on the purchase of the Agricultural lands.

The second cheque was dated the 25th of March, 1911, for \$140,576.65 in favour of the Western Financial Company, being a payment on account of the lands purchased from the Western Financial Company.

The third was dated September 7th, 1911, to the Carter Company for \$24,548. This payment was for one of the progress estimates for the Administration Building.

The fourth was dated the 8th of September, 1911, for \$20,892.99 being on account of the lands purchased from LeCompte for the Agricultural College.

The fifth cheque was dated the 15th of September, 1911, for \$79,184.30 in favour of Thomas Kelly & Sons, being payment on a progress estimate on their contract.

These cheques were all countersigned by George Black, Provincial Auditor.

The Hon. Hugh Armstrong, who was Provincial Treasurer during this time, was examined as a witness and asked as to these cheques, by Mr. Phillipps (p. 4309):

"Q. There is a cheque that on the evidence given here was "paid to Messrs. Carter-Halls-Aldinger & Company Limited for "\$24,548?

"A. Yes.

"Q. And that is signed by Mr. Rogers and Mr. Black?

"A. Yes.

"Q. Now, following up what you told me a moment ago that "it was customary to leave the matters pertaining to the different departments to the Minister of that particular department, "would that account for that cheque being signed in that way?

"A. No, there is no analogy whatever between the two "cases.

"Q. How do you suggest it would be different?

"A. Take the date of the cheque.—The cheques are all "dated September 7th.

"Q. Yes?

"A. That is no evidence that I signed those cheques on that "date or for that matter that the other cheque was signed on "that date, but the matter to me is very plain, and if you will "allow me I will explain it.

"Q. Certainly; that is what we want. We want the ex- "planation.

"A. The custom was while I signed cheques as provincial "treasurer, there was a provision made of course for some one "in my absence to sign a cheque or cheques if it were necessary, "or urgent that cheques should be signed. The custom was to

"place these cheques on my desk during my absence, and I would have several hundred cheques—maybe more than that, lying on the desk; if I would be away from the city—if I would be away from the city or out of my office, and in case any creditor of the Government applied to the treasurer's office for his cheque and it were not signed, he would be informed of the fact, and some one from the treasurer's office would select the voucher and take it to the acting treasurer for signature."

It is to your Commissioners most extraordinary that Mr. Justice Galt, while using these cheques as some evidence of the conspiracy, failed even to refer to the Hon. Mr. Armstrong's evidence.

A DEPARTMENTAL MATTER

The signing of the cheques was simply a departmental matter, and the Government surely could make its own arrangements as to who should sign them.

When the Hon. Mr. Rogers was examined before your Commissioners at Montreal on July 10th, 1917, he was asked as to the signing of cheques, and at page 18 of the proceedings before your Commissioners says:

"A. I might say in connection with the question that has arisen in the matter of the issuing of cheques that for years it was the common practice for me to sign cheques almost every day; at least any day on which the treasurer of the province was absent, as I was acting treasurer in his absence. While it was true that I was not asked to sign all the cheques, the routine cheques were generally held until the return of the treasurer who did that work himself. It finally became so burdensome that by that time, if I recollect correctly, a deputy minister was appointed for the purpose of signing the numerous cheques that were being issued, but it was nothing out of the way for us to be asked to sign cheques for the Department almost every day, especially in the absence of the treasurer, who, according to his evidence, explained that he was absent nearly half the time."

"SIR EZEKIEL McLEOD: In his absence were you acting treasurer?"

"A. Yes, always and I signed cheques almost every day in his absence."

It does not require the evidence of the Hon. Mr. Rogers to show that the signing of cheques by him was simply a departmental matter; and it would appear to your Commissioners from the evidence, that if Mr. Phillipps had chosen to do so, he could have produced numerous other cheques signed by the Hon. Mr. Rogers, as acting treasurer, and also cheques signed by other Ministers. Indeed, one of the cheques, produced in evidence was signed by the Hon. Mr. Caldwell, as acting treasurer.

The payments that were made by the cheques are not questioned; three of them were payments for the land of the Agricultural Buildings purchased by the Government; and two of them were payments on progress estimates on contracts.

There is absolutely nothing in the signing of these cheques to indicate or support the inference of conspiracy.

SECOND REPORT, Par. 5, Page 36.

"(5) During the year 1911, Victor W. Horwood was practically in charge as Provincial Architect. At first he was only deputy under Mr. Hooper, but owing to the latter's illness from March onwards till his death in September, Horwood and his assistants did all the work of the office. Horwood stated before me that he was not a skilled estimator of values of material, but from time to time in his evidence he showed very considerable practical knowledge. Of course, at all times when a tender for extras came in from any contractor, Horwood could readily have ascertained the value of the work proposed to be done by inquiry of any competent dealer or manufacturer in the class of work or material required. No such inquiries appear to have been made by Horwood or any of his assistants, but the charges of the Kelly firm were passed without question."

This is not supported by the evidence. Hooper was not well from March, 1911, until he left for England in October, but he was out from time to time, visited the office and practically had charge of it.

Your Commissioners gather from the evidence that Mr. Horwood was in the employ of the Government at the time this investigation was going on.

Horwood was in the court room during the investigation, advising and consulting with Mr. Phillipps. During the hearing when the Kelly & Sons matters were being investigated, Mr. Richards, who represented Kelly & Sons, asked that an order be issued to exclude witnesses from the court room and it was ordered accordingly.

Horwood, however, did not retire and Mr. Richards asked that Mr. Horwood should also be excluded; but Mr. Phillipps claimed that he required Horwood to be present. He says at page 3822:

"Mr. PHILLIPPS: I have asked Mr. Horwood to arrange to be here for the following week. I have not called him up to-day, and have not asked him to come in because I have not had cause to. I want Mr. Horwood here to listen to the evidence because I want to consult with him about it. He is the provincial architect and I want his information. There may be a number of things that he will be able to explain to me, that may save me going into them at all, and save a lot of work in this Commission."

Horwood was called as a witness at different times during the course of the investigation. No question was asked him in any way about a conspiracy. So far as his own evidence was concerned, he had nothing to do with Mr. Rogers, and on being examined on the question of the time limit for completing the contracts, says (p. 1688):

"Q. Wouldn't the architect be the man to determine that?

"A. I don't know, I had nothing to do with any of the build-ings (contracts) until the time of the Parliament Buildings.

"Q. We are going to put up a building, we have had the benefit of having one of the Ministers, under examination here, and he has stated that he always relied on the architect. The Minister would not dictate the time to be specified in the contract. Wouldn't he require the opinion of the architect?

"A. As far as the Minister you are referring to is concerned, "I had nothing to do with him."

Also at page 4458 being asked as to some work to be done on the auditorium that had been omitted he says:

"Q. Do you know that it was omitted?

"A. No.

"Q. If it was omitted it was not omitted under any instructions from you?

"A. None of this work was done under instructions from me, because that was in Mr. Hooper's time."

Also at page 4450:

"Q. You were in the architect's office, weren't you, at the time contracts were let? You were then Provincial Architect or deputy?

"A. No, Mr. Hooper was the architect.

"Q. But you were the deputy?

"A. No, I had no authority at all, I was only assistant, I had no authority to do anything. I wasn't acting."

Mr. Horwood was appointed assistant architect in January, 1911, and Provincial Architect in November, 1911 (p. 1661).

There is no evidence that any of the alleged neglect or incompetency of Horwood or of any other officials occurred during the time the Hon. Mr. Rogers was Minister.

Nothing is disclosed in the evidence relating to the fifth paragraph to warrant a finding of conspiracy against the Hon. Mr. Rogers.

SECOND REPORT, Par. 6, Page 36.

"(6) The two following instances of gross overpayments to contractors a few days before the Dominion election of 1911 illustrate the methods adopted by the Government under Mr. Rogers' regime, and strongly support the charge of conspiracy made by the Crown:

"(a) Carter-Halls-Aldinger Co. had contracted for the erection of the Administration Building. It appeared that up to September 15th, 1911, they had been paid by the Government moneys amounting to \$82,000.00. But the evidence showed, and it was finally admitted by counsel for the Carter Co. that not more than \$65,000.00 had been earned."

The learned Judge here has fallen into error. The facts were that the estimate was made up by the contractor on the 31st of August showing a claim of \$82,591.10 net for work done up to that date, but it was not paid at that time. (See Exhibits 45, 46, 47 and 65).

The first payment was made about May 28th, (Ex. No. 45) \$2,468.00

The second payment was made about July 19th, (Ex. No.46) 18,467.50

\$20,935.50

These two payments had been made on account before the estimate of the 31st of August had been made up by the contractor. After the estimate of \$82,591.10 was put in, the Department did not pay it at once, as appears from exhibit No. 47, but on or about the 13th of September a payment of 24,548.00 was made on account. So that the payments actually made up to the 15th of September were not \$62,000 as was over and over again asserted by counsel and has been found by the learned Judge, but only 45,483.50

This would seem to indicate vigilance on the part of the department rather than negligence or fraud. Afterwards on the 28th or 30th of September a further payment of \$37,107.60 was made (See Exhibit No. 65, Ev. of Elliott, p. 382) being the balance of the \$82,591.10. It is perfectly correct that it was conceded by counsel for the Carter Co. that only \$65,000 had been earned up to the 31st of August, but it must be borne in mind that the application for payment of the large amount was not granted when asked, nor was it paid until about the 30th of September, a month after the time to which the estimate of the \$65,000 of work and material provided had been made; and if the work was being carried on with any ordinary degree of expedition, unquestionably the amount of work done and material provided by 30th September would have been up to the full amount paid. There clearly was no gross overpayment at this time, and your Commissioners are of opinion from the evidence there was no overpayment shown at all.

HAD NOTHING TO DO WITH IT

Mr. Justice Galt is not only in error in stating that the payment of \$82,000 had been made on or prior to September 15th, but he is also

wrong in stating that the document showed that Mr. Rogers had sanctioned such payment. The documents show the contrary. The Government voucher (Exhibit No. 65) for the payment of the last or \$37,107.60 payment is dated 28th September, 1911, and shows that it was certified or approved for payment by the deputy minister. Hon. Mr. Rogers does not appear personally to have had anything whatever to do with it, nor to have so sanctioned it.

Mr. Phillipps, the counsel who examined Mr. Rogers with the documents before him, stated the payments were all made before September 15th, 1911, (p. 830). He seemed to be seeking to show the whole \$82,000.00 had been paid before the contributions by Carter. His zeal carried him beyond what the facts warranted.

SECOND REPORT, Par: 6b, Page 37.

"(b) Perhaps the most complete example of designed fraud "upon the Treasury is the following, to which I would direct "special attention. On March 27th, 1911, the Kelly firm tendered "for the construction of the Dormitory and Auditorium Building "at the sum of \$580,750.00 (See Exhibit No. 495). In their de- "tailed statement of tender, the contractors inserted, amongst "other things the following estimates of cost:

Stone masons, concrete work, etc.	\$ 70,000.00
Cut stone work, etc.	51,000.00
Brick and tile partitions	145,000.00
Carpenters' and Joiners' work	84,975.00
Structural iron and steel work	20,780.00

This sub-paragraph has reference to an application of estimate for payment to the amount of \$79,164.30 made by Kelly & Sons on August 31st, 1911, and paid to them by cheque dated 15th of September, 1911. The matters involved are set out and discussed Mr. Justice Galt on pages 37, 38, 39, 40 and 41 of the Second Report at too great length to be conveniently quoted here.

One of the grounds on which the learned Judge appears to base his conclusion that this payment of \$79,164.30 was a fraudulent over-payment is that he finds as a fact that it included upwards of \$32,000 for materials provided by the contractor and delivered on the ground, in respect of which, under the contract, Mr. Justice Galt found the contractor was not entitled to a progress estimate until the materials had been actually incorporated into the work.

If this application or estimate made by Kelly & Sons ever actually came before the Minister, of which there is no clear evidence, there is nothing on the face of it to show that it included any material that was not incorporated in the work.

That Kelly & Sons were entitled to this payment is certified by Mr. Hooper, the architect, as of date 13th of September, 1911. (See part of Exhibit 653).

Mr. Justice Galt, under the evidence, concludes that Mr. Hooper could not have signed the certificate, and states that McTavish, the assistant to Mr. Horwood, admitted that he had procured from Mr. Hooper certain certificates signed in blank, and the learned Judge concludes that doubtless this certificate was one of them.

From the evidence, it is by no means clear that Mr. Hooper was not in a condition to attend to the matter himself at that date. (See evidence of his brother James Hooper at page 1753, etc. If, however, it had been signed in blank, Mr. Phillipps, during the argument, in speaking of these blank certificates, says that there is nothing he found in the investigation to show that Mr. McTavish used them improperly. (Argument p. 42).

The payment was also certified as correct by the accountant F. W. Fisher and by Charles H. Dancer, and approved for payment by the Hon. Mr. Rogers.

There being no fraud shown, your Commissioners find that it being so certified by the proper officers, the Minister was justified in approving of the payment.

ALL CAREFULLY DRAWN

Your Commissioners may add that they have examined the contract with Kelly & Sons. All the contracts made by the Government in connection with the Agricultural Buildings appear to be in the same form and are very carefully drawn with a view to safeguarding the Government. By the terms of the contract (Section 15) it is provided that the materials for these buildings were to become the property of the Government so soon as delivered by the contractor on the ground.

Having regard to the whole of the contract and particularly to section 15, your Commissioners think it open to very great question as to whether the contractor was not entitled to include in his progress estimates the value of material on the ground.

SECOND REPORT, Par. 7, Page 41.

"(7) The Hon. Robert Rogers attended before the Commission and was examined in September last in regard to the above payment to the Carter Co., and the documents showed that Mr. Rogers had sanctioned it. His only explanation was that he must have done so on the recommendation of the officers of the department. (See evidence p. 830). The necessary result of the overpayments was that the Provincial Treasury was depleted to the extent of them."

Your Commissioners have already referred to this and have shown that the amount paid up to September 15th, was only \$45,483.50, and not \$82,000 and that Mr. Rogers personally did not sanction any payment beyond the \$45,483.50.

Mr. Justice Galt then says (p. 42 Second Report):

"The transactions set forth in the above seven paragraphs appear to me to establish that early in the year 1911 the Hon. Robert Rogers conspired with Thomas Kelly (senior member of Thomas Kelly & Sons) to obtain moneys from the Provincial Treasury for the purposes of the Conservative campaign fund, and for the personal benefit of Thomas Kelly and his firm, and probably for other purposes not yet disclosed."

NO EVIDENCE OF CONSPIRACY

Your Commissioners differ entirely from this finding and conclusion by Mr. Justice Galt. They have no hesitation in stating that the matters and transactions mentioned in the said seven paragraphs, properly considered in the light of the evidence, do not, nor do any of them, establish any conspiracy as alleged. The evidence does not disclose that Thomas Kelly & Sons ever paid a dollar into the election fund. The principal moneys paid for election purposes were paid by the Carter Co. They paid \$7,500 while Hon. Mr. Rogers was a member of the Manitoba Government, of which the Hon. Mr. Rogers had no knowledge whatever, and there does not appear to have been any other moneys paid in by a contractor of the Agricultural Buildings for election purposes, whilst the Hon. Mr. Rogers was a member of the Manitoba Government. The Carter Co., afterwards, in 1913 and 1914, did pay \$15,000 in three cheques of \$5,000 each at different times for local elections in Manitoba, with which the Hon. Mr. Rogers had nothing whatever to do. It does not appear that Mr. Kelly had any connection with the Carter Co., or its contribution, and Mr. Justice Galt has found that Mr. W. H. Carter of that company was not a party to the conspiracy.

The largest contractor in the Agricultural Buildings was Thomas Kelly & Sons, and as your Commissioners have said, they do not appear to have paid anything at any time towards any election fund. The only contractors found by Mr. Justice Galt, besides the Carter Co., as having contributed anything towards the election funds were Hammond and Rodway, who, Mr. Justice Galt says, paid \$800, and Mr. J. W. Wright, who paid \$600, but this was during the years 1913 and 1914, and for local

election purposes, and the contracts given to Hammond & Rodway and J. W. Wright were made some time after the Hon. Mr. Rogers had left the Government.

Mr. Justice Galt says further, (p. 42 Second Report):

"The means adopted appear to have been as follows:

"(1) An atmosphere of laxity was to be created in the department of Public Works by and with the assistance of Victor W. Horwood, acting provincial Architect, whereby the various contractors would soon realize that the Government Inspectors were willing to accept and pass almost any estimates of work done or materials supplied which the various contractors furnished."

AN UNWARRANTED ASSUMPTION

The evidence does not warrant any such conclusion. On the contrary there is no evidence of any laxity during the time the Hon. Robert Rogers was Minister of Public Works of Manitoba. Mr. Horwood was the acting architect, and your Commissioners have already quoted from Mr. Horwood's evidence that he did not have to do with these buildings, at all events, whilst the Hon. Mr. Rogers was Minister of Public Works. Your Commissioners think it singular that Mr. Horwood, who was found by Mr. Justice Galt to be one of the conspirators, was still in the employ of the Government and present at the investigation engaged in assisting Mr. Phillipps in ferreting out this conspiracy. He was called as a witness several times and no question was asked him at all as to a conspiracy.

The Hon. Mr. Rogers appears from the evidence to have safeguarded the Government at all times. It appears (Exhibit 506) that Kelly & Sons had returned their contract and objected to signing it on account of the time fixed for the completing of the building. The Hon. Mr. Rogers directed the deputy Minister to send them the following letter:

"Winnipeg, 13th June, 1911.

"Messrs. T. Kelly & Sons,
"Contractors,
"Nanton Block,
"City.

"Gentlemen:

"Re Agricultural College:

"I have received back the forms of contract which were sent you for signature, and note your objection to signing them on account of the time set for completion of the building. I am

"directed to inform you that if you are unable to sign the contract as it stands, it will be necessary to withdraw the acceptance of your tender, and transfer it to someone else."

This was signed by the deputy minister.

If there had been existing, as found by Mr. Justice Galt, any conspiracy to defraud, it is inconceivable that any such letter would have been written by Mr. Rogers, the effect of which would have been to eliminate Kelly & Sons from this contract of over half a million dollars.

Mr. Justice Galt further states as a means to be adopted to carry out the conspiracy, (Par. 2, p. 42, Second Report):

"(2) 'Extras' of large amount were to be called for and awarded to each contractor without any competition with other contractors, and without any effective scrutiny by the Government or its officials as to the contractor's charges."

NO SUCH EVIDENCE

The evidence does not justify or sustain any such finding during the time the Hon. Mr. Rogers held office.

On the 14th of June, 1911, Kelly & Sons submitted to Mr. Hooper, the provincial architect, prices for proposed changes in the dormitory building. The matter was laid before the Hon. Mr. Rogers and by letter of the 20th of June, 1911, (Exhibit No. 695) the following instructions were given:

"Winnipeg, June 20th, 1911.

"S. Hooper, Esq.,
"Provincial Architect,
"Ft. Garry Court,
"City.

"Dear Sir:

"Re Dormitory Bldg., Agricultural College:

"I return herewith Messrs. Kelly & Sons' estimate of additional work on the dormitory building. The Minister has decided not to go on with any of this work except the last item of foundation walls in cement, if you consider this necessary. He considers that the charge of \$4,000 extra for bricks in front of the building should not be entertained as by the specifications you have the choice of bricks to be used.

"I have the honour to be,

Sir,

Your obedient servant

Chas. H. Dancer,

Deputy Minister.

Surely if there had been any conspiracy on account of extras, these directions would never have been given.

With regard to Kelly & Sons, your Commissioners can find no extra arranged for in Hon. Mr. Rogers' time except the matter of cement that is referred to in the letter of June 20th, 1911, to which allusion has just been made, and no extras for the power house were let to the Carter Co., except the matter of cement instead of lime mortar, and the \$7,759 for coal bunkers to which reference has also been made. This latter contract was let on the recommendation of the architect. (See p. 557).

The third means adopted referred to by Mr. Justice Galt is as follows, (p. 42):

"(3) As soon as the contractors had been given to understand the favourable terms they might expect, emissaries from the Conservative Committee, or other organizations were to call upon the contractors for contributions to the campaign fund. The chief emissary employed in 1911 was D. S. Sprague."

There is absolutely no evidence to warrant this finding.

So far as the Hon. Mr. Rogers is concerned, it can only be based on the fact that the Carter Co., during the time the Hon. Mr. Rogers was in office gave \$7,500 to an election fund. The Hon. Mr. Rogers knew nothing about this, and the evidence does not disclose that any other moneys for election purposes were contributed by the other contractors during the time the Hon. Mr. Rogers was in office.

Mr. Justice Galt also says (p. 43 Second Report):

"(4) It is difficult to believe that the conspiracy in question was confined to Messrs. Rogers, Thomas Kelly & Sons and Victor W. Horwood, and that other members of the Cabinet who were equally interested in the campaign fund were in ignorance of what was going on. Because as will be shown later on, the same methods were followed and amplified by the Government and its officials in the years 1912, 1913, and 1914. The management of the design was in the hands of Mr. Rogers during the year 1911 until he was transferred to Ottawa in October of that year."

That is the first mention Mr. Justice Galt makes of Horwood as being one of the conspirators.

NOT A PARTICLE OF EVIDENCE

The references by Mr. Justice Galt to the Hon. Mr. Rogers in the last quotation and on pages 43 and 44 of the Second Report, are entirely gratuitous and without any evidence whatever to warrant them.

There is not a particle of evidence to show that the Hon. Mr. Rogers took any part in any election during the time these contracts were pending.

Mr. Justice Galt then (p. 43) proceeds to consider what he terms the second period—that is from the time the Hon. Mr. Rogers left the Government of Manitoba.

We do not deal with this paragraph except to say that all the over charges found to have been made by Thomas Kelly & Sons were made during this second period, and all the contracts which Mr. Justice Galt designates as fraudulent were made after the Hon. Mr. Rogers left the Government; and the Hon. Mr. Rogers had no connection whatever with them.

SUMMARY OF MR. JUSTICE GALT

At the close of the Second Report, the learned Judge makes a summary of his findings (See pages 45-47).

In this summary the learned Judge merely recapitulates his previous findings; but your Commissioners would call attention to the following differences:

In his first finding (p. 42) he states that the conspiracy was entered into early in 1911, between the Hon. Mr Rogers and Thomas Kelly, senior member of the firm of Thomas Kelly & Sons.

In his summary (p. 46) he finds that the conspiracy was entered into between the Hon. Mr. Rogers and Thomas Kelly, senior member of the firm of Thomas Kelly & Sons, shortly after the site of the new Agricultural College was acquired. The evidence shows that the site was acquired early in September, 1910, and that Kelly's connection with the matter began when his firm tendered in March, 1911.

In his summary the learned Judge in referring to the increase in the cost of the buildings, places the total cost at \$2,361,841.15; (p. 47) whereas in his first report (p. 5) he states that the buildings cost \$3,875,500.

The other findings in this summary your Commissioners have already discussed, and they will not encumber the report by going over them again.

SUMMARY

Your Commissioners find:

(a) That the increase of the Carter Co.'s tender for Power House by \$8,700 was recommended by Mr. Hooper, the Architect, to the Hon. Mr. Rogers, before he (the Hon. Mr. Rogers) telephoned to Mr. Carter.

(b) That there was no connection whatever between such increase and the contribution of \$7,500 made by the Carter Co., to the election fund.

(c) That during the time the Hon. Mr. Rogers was Minister of Public Works for Manitoba, all the contracts that were let for the Agricultural Buildings were properly let.

(d) That the contracts themselves were carefully drawn and properly safeguarded the Government.

(e) That the payments during the Hon. Mr. Rogers' term of office were made only after they had been duly and honestly certified by the proper officials of the Department.

(f) That there was no conspiracy between the Hon. Mr. Rogers and Thomas Kelly or any other contractor or person.

In conclusion your Commissioners report:

(1) That pursuant to the said Commission, your Commissioners have reviewed and considered the whole of the evidence furnished us as taken by the said Mr. Justice Galt as such Commissioner, and have reviewed and considered his said two reports, and all his findings on such evidence.

(2) And your Commissioners further report that such evidence does not sustain or support the findings of the said Mr. Justice Galt, as such Commissioner, as set forth in such reports, in so far as they reflect upon or prejudicially affect the honour or integrity of the Hon. Robert Rogers, or the honesty of his dealings or transactions.

On the contrary your Commissioners consider that the reports of Mr. Justice Galt—in so far as they reflect upon the

honour or integrity of the Hon. Mr. Rogers, or the honesty of his dealings or transactions—are against the evidence.

Your Commissioners return herewith:

The Commission issued herein: the evidence taken before Mr. Justice Galt that was laid before your Commissioners, consisting of nine volumes, together with two volumes of argument of counsel before Mr. Justice Galt; seven volumes of exhibits arranged numerically, six volumes of exhibits arranged chronologically; one extra volume No. 1 numerical exhibit; one volume exhibit 4-A; the two reports made by Mr Justice Galt and certified by the Deputy Provincial Secretary bound in one pamphlet; also the proceedings before your Commissioners on the 10th day of July, 1917, including the briefs of factums then filed by Counsel for the Hon. Mr. Rogers; also copy of the telegram sent to the Hon. Mr. Justice Galt and his reply thereto; also copy of the telegram sent to the Attorney General and Premier of Manitoba and the reply thereto.

The whole of which is respectfully submitted.

Dated at the City of Montreal, this Twenty-sixth day of July, A.D. 1917.

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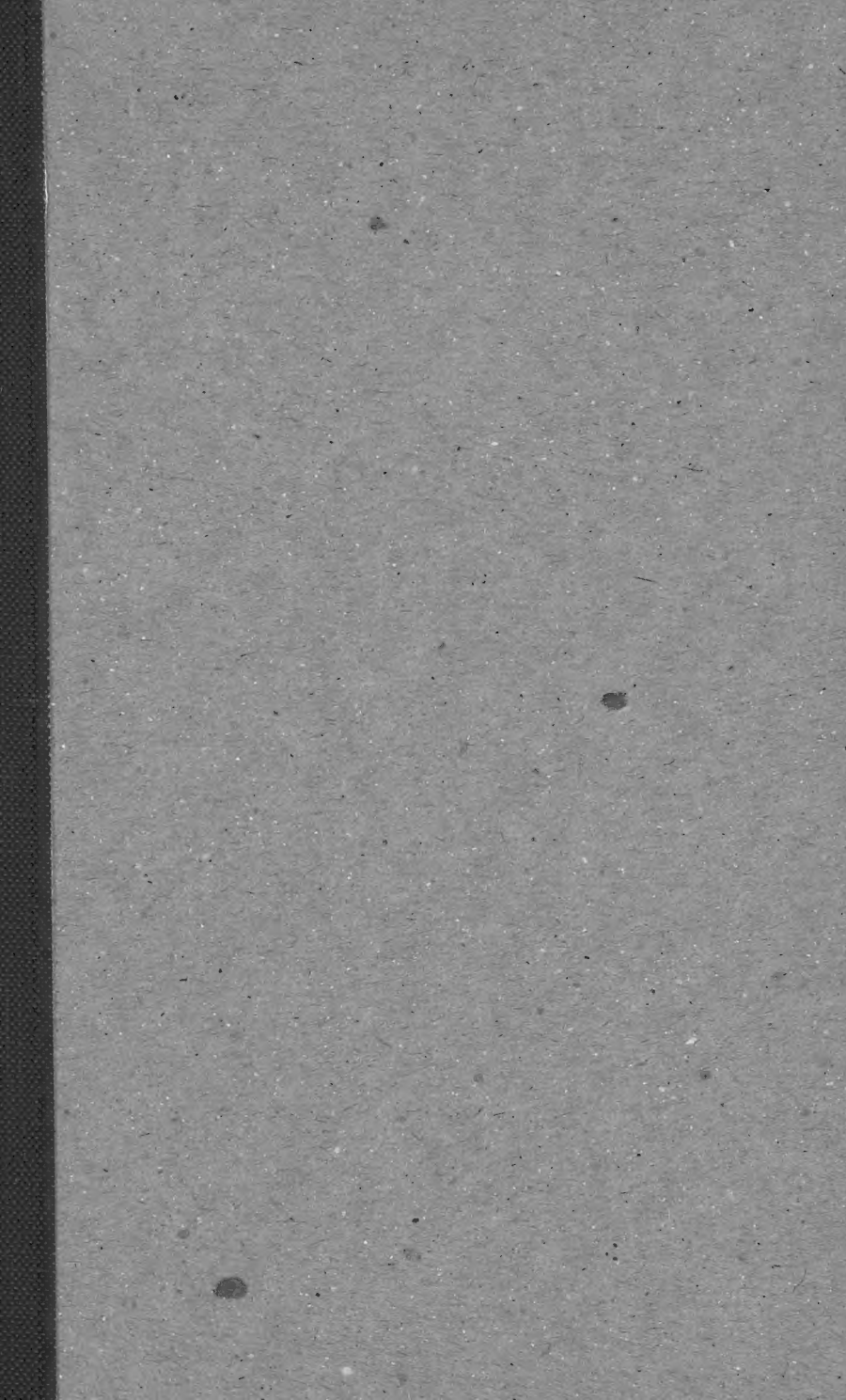
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